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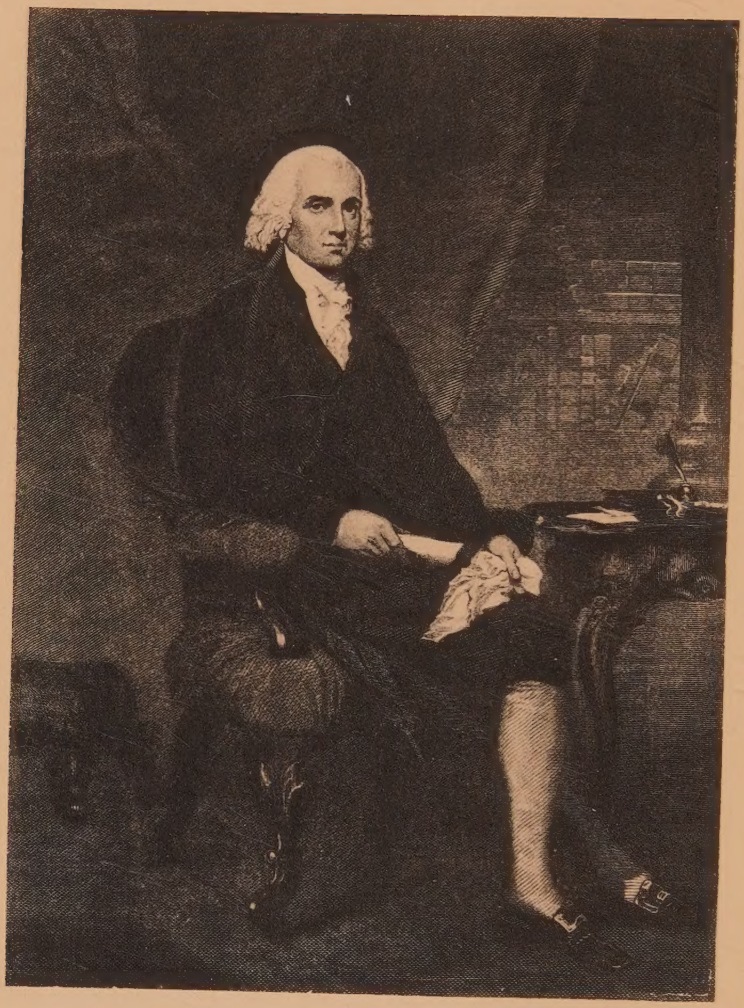

James Madison

GREAT DEBATES IN AMERICAN HISTORY

From the Debates in the British Parliament on the Colonial Stamp Act (1764–1765) to the Debates in Congress at the Close of the Taft Administration (1912–1913)

EDITED BY

MARION MILLS MILLER, LITT.D. (PRINCETON)

Editor of "The Life and Works of Abraham Lincoln," etc

IN FOURTEEN VOLUMES

EACH DEALING WITH A SPECIFIC SUBJECT, AND CONTAINING A SPECIAL INTRODUCTION BY A DISTINGUISHED AMERICAN STATESMAN OR PUBLICIST

VOLUME SEVEN

CIVIL RIGHTS: PART ONE

With an Introduction by WOODROW WILSON, LL.D.
President of the United States

CURRENT LITERATURE PUBLISHING COMPANY
NEW YORK

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By WOODROW WILSON

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INTRODUCTION

The Constitutional Results of Reconstruction [1]

THE first practical result of reconstruction under the acts of 1867 was the disfranchisement, for several weary years, of the better whites, and the consequent giving over of the Southern governments into the hands of the negroes. And yet not into their hands, after all. They were but children still; and unscrupulous men, "carpetbaggers,"—men not come to be citizens, but come upon an expedition of profit, come to make the name of Republican forever hateful in the South—came out of the North to use the negroes as tools for their own selfish ends; and succeeded to the utmost fulfillment of their dreams. Negro majorities for a little while filled the Southern legislatures, but they won no power or profit for themselves beyond a pittance here and there for a bribe. Their leaders, strangers and adventurers, got the lucrative offices, the handling of the State moneys raised by loan, and of the taxes spent no one knew how. Here and there an able and upright man cleansed administration, checked corruption, served them as a real friend and an honest leader; but not for long. The negroes were exalted; the States were misgoverned and looted in their name; and a few men, not of their number, not really of their interest, went away with the

[1] Adapted from an article on "The Reconstruction of the Southern States," in the *Atlantic Monthly*, January, 1901.

gains. They were left to carry the discredit and reap the consequences of ruin when at last the whites who were real citizens got control again.

But we are here less concerned with that dark chapter of history than with the far-reaching constitutional and political influences and results of reconstruction. That it was a revolutionary process is written upon its face throughout; but how deep did the revolution go? What permanent marks has it left upon the great structure of government, federal, republican, a partnership of equal States and yet a solidly coherent national power which the Fathers erected?

First of all, it is clear to everyone who looks straight upon the facts, every veil of theory withdrawn and the naked body of affairs uncovered to meet the direct question of the eye, that civil war discovered the foundations of our government to be in fact unwritten, set deep in a sentiment which constitutions can neither originate nor limit. The law of the Constitution reigned until war came. Then the stage was cleared and the forces of a mighty sentiment, hitherto unorganized, deployed upon it. A thing had happened for which the Constitution had made no provision. In the Constitution were written the rules by which the associated States should live in concert and union, with no word added touching days of discord or disruption; nothing about the use of force to keep or to break the authority ordained in its quiet sentences, written, it would seem, for lawyers, not for soldiers. When the war came, therefore, and questions were broached to which it gave no answer, the ultimate foundation of the structure was laid bare: physical force, sustained by the stern loves and rooted predilections of masses of men, the strong ingrained prejudices which are the fiber of every system of government. What gave the war its passion, its hot energy as of a tragedy from end to end, was that in it sentiment met sentiment, conviction conviction. It was the sentiment, not of all, but of the efficient majority, the conviction of the major part, that won. A minority, eager and absolute in another conviction, devoted to the utmost pitch of self-sacrifice to an opposite and incompatible ideal, was crushed and

overwhelmed. It was that which gave an epic breadth and majesty to the awful clash between bodies of men who were in all things else of one strain and breeding; it was that which brought the bitterness of death upon the side which lost, and the dangerous intoxication of an absolute triumph upon the side which won. But it unmistakably uncovered the foundations of force upon which the Union rested.

It did more. The sentiment of union and nationality, never before aroused to full consciousness or knowledge of its own thought and aspirations, was henceforth a new thing, aggressive and aware of a sort of conquest. It had seen its legions and felt its might in the field. It saw the very Constitution, for whose maintenance and defence it had acquired the discipline of arms, itself subordinated for a time to the practical emergencies of war, in order that the triumph might be the more unimpeded and complete; and it naturally deemed nationality henceforth a thing above law. As much as possible—so far as could be without serious embarrassment—the forms of the fundamental law had indeed been respected and observed; but wherever the law clogged or did not suffice, it had been laid aside and ignored. It was so much the easier, therefore, to heed its restrictions lightly when the war was over and it became necessary to force the Southern States to accept the new model. The real revolution was not so much in the form as in the spirit of affairs. The spirit and temper and method of a Federal Union had given place, now that all the spaces of the air had been swept and changed by the merciless winds of war, to a spirit which was consciously national and of a new age.

It was this spirit which brushed theories and technicalities aside and impressed its touch of revolution on the law itself. And not only upon the law, but also upon the processes of lawmaking and upon the relative positions of the President and Congress in the general constitutional scheme of the government, seeming to change its very administrative structure. While the war lasted the President had been master. The war ended and Mr. Lincoln gone, Congress pushed its

way to the front and began to transmute fact into law, law into fact. In some matters it treated all the States alike. The Thirteenth, Fourteenth, and Fifteenth amendments bound all the States at once, North and West as well as South. But that was, after all, a mere equality of form. The amendments were aimed, of course, at the States which had had slaves and had attempted secession, and did not materially affect any others. The votes which incorporated them in the Constitution were voluntary on the part of the States whose institutions they did not affect, involuntary on the part of the States whose institutions they revolutionized. These States were then under military rule. Congress had declared their whole political organization to be illegal; had excluded their representatives from their seats in the Houses; and yet demanded that they assent, as States, to the amendment of the Constitution as a condition precedent to their reinstatement in the Union! No anomaly or contradiction of lawyers' terms was suffered to stand in the way of the supremacy of the lawmaking branch of the general government. The Constitution knew no such process as this of reconstruction, and could furnish no rules for it. Two years and a half before the Fifteenth Amendment was adopted by Congress, three years and a half before it was put in force by its adoption by the States, Congress had by mere act forced the Southern States, by the hands of military governors, to put the negroes upon the roll of their voters. It had dictated to them a radical revision of their constitutions, whose items should be framed to meet the views of the Houses rather than the views of their own electors. It had pulled about and rearranged what local institutions it saw fit, and then had obliged the communities affected to accept its alterations as the price of their reinstatement as self-governing bodies politic within the Union.

It may be that much, if not all, of this would have been inevitable under any leadership, the temper of the times and the posture of affairs being what they were; and it is certain that it was inevitable under the actual circumstances of leadership then existing at Washington. But to assess that matter is to reckon with causes.

For the moment we are concerned only with consequences, and are neither justifying nor condemning, but only comprehending. The courts of the United States have held that the Southern States never were out of the Union; and yet they have justified the action of Congress throughout the process of reconstruction, on the ground that it was no more than a proper performance by Congress of a legal duty under the clause of the Constitution which guarantees to every State a republican form of government. It was making the Southern governments republican by securing full standing and legislative representation as citizens for the negroes. But Congress went beyond that. It not only dictated to the States it was reconstructing what their suffrage should be, it also required that they should never afterward narrow that suffrage. It required of Virginia, Texas, and Mississippi that they should accord to the negroes not only the right to vote but also the right to hold political office; and that they should grant to all their citizens equal school privileges and never afterward abridge them. So far as the right to vote was concerned, the Fifteenth Amendment subsequently imposed the same disability with regard to withholding the suffrage upon all the States alike; but the Southern States were also forbidden by mere Federal statute to restrict it on any other ground; and in the cases of Virginia, Mississippi, and Texas Congress assumed the right, which the Constitution nowhere accorded it, to regulate admission to political office and the privileges of public education.

South Carolina and Mississippi, Louisiana and North Carolina have since changed the basis of their suffrage, notwithstanding; Virginia and Mississippi and Texas might now, no doubt, reorganize their educational system as they pleased without endangering their status in the Union or even meeting rebuke at the hands of the Federal courts. The temper of the times has changed; the Federal structure has settled to a normal balance of parts and functions again; and all the States are in fact unfettered except by the terms of the Constitution itself. It is marvelous what healing and oblivion peace has wrought, how the traces of reconstruction have worn

away. But a certain deep effect abides. It is within, not upon the surface. It is of the spirit, not of the body. A revolution was carried through when war was done which may be better comprehended if likened to England's subtle making over, that memorable year 1688. Though she punctiliously kept to the forms of her law, England then dismissed a king, almost as, in later years, she would have dismissed a minister, though she preserved the procedure of her constitution intact. She in fact gave a final touch of change to its spirit. She struck irresponsible power away and made her government once for all a constitutional government. The change had been insensibly a-making for many a long age; but now it was accomplished consciously and at a stroke. Her constitution, finished, was not what it had been until this last stroke was given—when silent forces had at last found sudden voice, and the culminating change was deliberately made.

Nearly the same can be said of the effect of the war and of the reconstruction of the Southern States upon our own government. It was a revolution of consciousness—of mind and purpose. A government which had been in its spirit federal became, almost of a sudden, national in temper and point of view. The national spirit had long been a-making. Many a silent force which grew quite unobserved from generation to generation in pervasiveness and might, in quiet times of wholesome peace and mere increase of nature, had been breeding these thoughts which now sprang so vividly into consciousness. The very growth of the nation, the very lapse of time and uninterrupted habit of united action, the mere mixture and movement and distribution of populations, the mere accretions of policy, the mere consolidation of interests, had been building and strengthening new tissue of nationality the years through, and drawing links stronger than links of steel round about the invisible body of common thought and purpose which is the substance of nations. When the great crisis of secession came, men knew at once how their spirits were ruled, men of the South as well as men of the North—in what institutions and conceptions of government their blood was fixed to run; and a great and instant readjustment took

place, which was for the South, the minority, practically the readjustment of conquest and fundamental reconstruction, but which was for the North, the region which had been transformed, nothing more than an awakening.

It cannot be said that the forms of the Constitution were observed in this quick change as the forms of the English constitution had been observed when the Stuarts were finally shown the door. There were no forms for such a business. For several years, therefore, Congress was permitted to do by statute what, under the long-practiced conceptions of our Federal law, could properly be done only by constitutional amendment. The necessity for that gone by, it was suffered to embody what it had already enacted and put into force as law into the Constitution, not by the free will of the country at large, but by the compulsions of mere force exercised upon a minority whose assent was necessary to the formal completion of its policy. The result restored, practically entire, the forms of the Constitution; but not before new methods and irregular, the methods of majorities but not the methods of law, had been openly learned and practiced and learned in a way not likely to be forgot. Changes of law in the end gave authentic body to many of the most significant changes of thought which had come, with its new consciousness, to the nation. A citizenship of the United States was created; additional private civil rights were taken within the jurisdiction of the general Government; additional prohibitions were put upon the States; the suffrage was in a measure made subject to national regulation. But the real change was the change of air—a change of conception with regard to the power of Congress, the guiding and compulsive efficacy of national legislation, the relation of the life of the land to the supremacy of the national law-making body. All policy thenceforth wore a different aspect.

We realize it now, in the presence of novel enterprises, at the threshold of an unlooked-for future. It is evident that empire is an affair of strong government and not of the nice and somewhat artificial poise or of the delicate compromises of structure and authority characteristic of a mere federal partnership. Undoubt-

edly the impulse of expansion is the natural and wholesome impulse which comes with a consciousness of matured strength; but it is also a direct result of that national spirit which the war between the States cried so wide awake, and to which the process of reconstruction gave the subtle assurance of practically unimpeded sway and a free choice of means. The revolution lies there, as natural as it was remarkable and full of prophecy. It is this which makes the whole period of reconstruction so peculiarly worthy of our study. Every step of the policy, every feature of the time, which wrought this subtle transformation, should receive our careful scrutiny. We are now far enough removed from the time to make that scrutiny both close and dispassionate. A new age gives it a new significance.

Woodrow Wilson

CHAPTER I

Naturalization

Naturalization Law of 1790—New Law of 1794; Debate On It in the House: in Favor of Stringent Requirements, Theodore Sedgwick [Mass.], William Vans Murray [Md.]; Opposed, John Page [Va.], James Madison [Va.], John Nicholas [Va.], Samuel Dexter [Mass.], Abraham Baldwin [Ga.]: in Favor of Renunciation of Titles of Nobility, William B. Giles [Va.], Mr. Madison, Mr. Page; Opposed, William L. Smith [S. C.], Mr. Dexter, Richard Bland Lee [Va.], Fisher Ames [Mass.], Mr. Murray: in Favor of Ten Years' Residence, Samuel Smith [Md.]; in Favor of Five Years, Mr. Baldwin, Thomas Fitzsimons [Pa.].

THE chief problems after the assurance of the triumph of Union arms in the Civil War were the civil rights of the negro and the reconstruction of the governments of the seceded States in such a manner as to protect him in these rights. Before introducing the debates on this question it will be necessary to revert to earlier ones connected with the general subject of citizenship and its special phases, such as Naturalization, Rights of Aliens, etc.

In 1790 the first Congress established a uniform rule of naturalization, by which aliens, being free white persons who should have resided two years in the United States, might be admitted as citizens thereof under certain regulations and restrictions.

In his address at the opening of Congress, on November 18, 1794, President Washington spoke of the need of "affectionate vigilance" on the part of native Americans "over that precious depository of American happiness, the Constitution," especially as an example to "those who from every clime are daily seeking a dwelling in our land."

This allusion was occasioned by the great influx of

immigrants from the war-racked countries of Europe. Upon what terms to admit them became a pressing matter with Congress, and early in the session a bill was presented in the House of Representatives to establish a more stringent rule of naturalization than that of 1790. Its provisions were substantially those which prevail to-day. It was debated off and on, from December 22, 1784, until January 8, 1795, when it was passed and sent to the Senate, where certain amendments were proposed, which were accepted by the House on January 26, 1795. In the debate in the House general principles of citizenship were presented which are of interest to-day, as well as certain principles applicable to the conditions of the time, which strikingly present the temper of our early statesmen. In the debate on general principles John Page [Va.], James Madison [Vt.], John Nicholas [Vt.], Samuel Dexter [Mass.], and Abraham Baldwin [Ga.] were opposed to stringent requirements in the way of oaths and attestations, and Theodore Sedgwick [Mass.], and William Vans Murray [Md.] in favor of them.

On the specific question of the renunciation of titles to nobility William B. Giles [Va.], Mr. Madison, and Mr. Page were in favor of renunciation, and William L. Smith [S. C.], Mr. Dexter, Richard Bland Lee [Va.], Fisher Ames [Mass.], and Mr. Murray were opposed to it.

Upon the question of duration of residence Samuel Smith [Md.] advocated a term of ten years and Mr. Baldwin and Thomas Fitzsimons [Pa.] a term of five years.

On Naturalization

House of Representatives, December 22, 1794–January 8, 1795

Mr. Page disliked the requirement of an oath of allegiance by the applicant for citizenship. He trusted that a Constitution much admired, and with such wholesome laws, will be an inducement to many good men to become citizens, and that, should bad men come among us, they will be discountenanced by the more virtuous class of citizens and, if necessary, be punished

by the laws. He hoped that good schools would soon be spread over all the States, and, hence, that good sense and virtue will be so generally diffused among us that emigrants will be unable to corrupt our manners. Even at present, he relied so much on the virtue and discernment of his fellow citizens, the power of the law, and the energy of Government as to apprehend no danger from emigration in the United States.

Mr. Sedgwick.—America, if her political institutions should, on experience, be found to be wisely adjusted, and she shall improve her natural advantages, had opened to her view a more rich and glorious prospect than ever was presented to man. She had chosen for herself a government which left to the citizen as great a portion of freedom as was consistent with a social compact. All believed the preservation of this government, in its purity, indispensable to the continuance of our happiness. The foundation on which it rested was general intelligence and public virtue; in other words, wisdom to discern, and patriotism to pursue, the general good. He had pride in believing his countrymen more wise and virtuous than any other people on earth; hence he believed them better qualified to administer and support a Republican government. This character of Americans was the result of early education, aided, indeed, by the discipline of the Revolution. In that part of the country with which he was best acquainted, the education, manners, habits, and institutions, religious and civil, were republican. The community was divided into corporations, in many respects resembling independent republics, of which almost every man, the qualifications were so small, was a member. They had many important and interesting concerns to transact. They appointed their executive officers, enacted by-laws, raised money for many purposes of use and ornament. Here, then, the citizens early acquired the habits of temperate discussion, patient reasoning, and a capacity of enduring contradiction. Here the means of education and instruction are instituted and maintained; public libraries are purchased and read; these are the proper schools for the education of republican citizens; thus are to be planted the seeds of republicanism. If you will cultivate the plants which are to be reared from these seeds you will gather an abundant harvest of long-continued prosperity.

Much information might be obtained by the experience of others if, in despite of it, we were not determined to be guided only by a visionary theory. Behold the ancient republics of Greece and Rome; see with what jealousy they guarded the rights of citizenship against adulteration by foreign mixture.

The Swiss nation in modern times had not been less jealous on the same subject. Indeed, no example could be found in the history of man to authorize the experiment which had been made by the United States. It seemed to have been adopted by universal practice as a maxim that the republican character was no way to be formed but by early education. In some instances, to form this character, those propensities which are generally considered as almost irresistible, were opposed and subdued. And shall we alone adopt the rash theory that the subjects of all governments—despotic, monarchical, and aristocratical—are, as soon as they set foot on American ground, qualified to participate in administering the sovereignty of our country? Shall we hold the benefits of American citizenship so cheap as to invite, nay, almost bribe, the discontented, the ambitious, and the avaricious of every country to accept them?

It was said, in support of what was termed our liberal policy, that our country wanted commercial capital; that we had an immense tract of vacant territory; and that we ought not, with the avarice of a miser, to engross to ourselves the exclusive enjoyment of our political treasures; but he had never been convinced that we ought to make so great a sacrifice of principle for the rapid accumulation of commercial capital. He had never been convinced that, by an improvement of our own resources, it would not accumulate as fast as might be for the public benefit. We heard much of equality. Property was, in some sense, power; and the possession of immense property generated daring passions which scorned equality, and with impatience endured the restraints of equal laws. Property was undoubtedly to be protected as the only sure encouragement of industry, without which we should degenerate into savages. But he had never been convinced that the anxiety with which we wished an accumulation of capital, in the hands of individuals, was founded on correct republican reflection. The ardent ambition inspired by the possession of great wealth, and the power of gratifying it which it conferred, had, in many instances, disturbed the public peace, and, in not a few, destroyed liberty.

The vacant lands, which some, with so much avidity, wished to see in the occupation of foreigners, he considered as the best capital stock of the future enjoyment of Americans; as an antidote against the poison of luxury; as the nursery of robust and manly virtue; and as a preventive of a numerous class of citizens becoming indigent and, therefore, dependent. Whenever the time should arrive (and may that period be very distant) when there should no longer be presented to the poor a

decent competence and independence, as the effect of industry and economy (which would generally be the case when lands were no longer to be obtained on their present easy and reasonable terms), then that description of men, now perhaps the most happy and virtuous, would become miserable to themselves and a burden to the community.

He considered America as in possession of a greater stock of enjoyment than any other people on earth. That it was our duty to husband it with care; yet he could not altogether exclude such virtuous individuals as might fly here, as to an asylum, against oppression. On the one hand, he would not dissipate our treasures with the thoughtless profusion of a prodigal; nor would he, on the other, hoard them, as in the unfeeling grasp of a miser. Our glorious fabric has been cemented by the richest blood of our country, and may it long continue to shelter us against the blasts of poverty, of anarchy, and of tyranny.

Mr. Madison, like Mr. Page, was opposed to the requirement of the oath of allegiance. It was hard to make a man swear that he preferred the Constitution of the United States, or to give any general opinion, because he may, in his own private judgment, think monarchy or aristocracy better, and yet be honestly determined to support this Government as he finds it.

Mr. Nicholas opposed the word "moral" in an amendment requiring that the applicant for citizenship furnish attestations of his "good moral character." This word might be hereafter implied to mean something relative to religious opinions.

Mr. Sedgwick remarked that the word "moral" is opposed to "immoral" and has no particular reference whatever to religion, or whether a man believes anything or nothing. It has no reference to religious opinions. We can everywhere tell, by the common voice of the world, whether a man is moral or not in his life without difficulty. In some States of the Union adultery is not punishable by law, yet it is everywhere said to be an immoral action.

Mr. Madison spoke on the resolution that if an American citizen chose to expatriate himself he should not be allowed to enter into the list of citizens again without a special act of Congress and of the State from which he had gone.

He said that he did not think that Congress, by the Constitution, had any authority to readmit American citizens at all. It was granted to them to admit only aliens.

Mr. Dexter held that a man cannot expatriate himself without the express consent of the nation of which he is a subject.

Mr. Murray would infer that this country had a right to naturalize foreigners, because she has naturalized them; and that this country, by its laws, having accepted the allegiance of an alien, the alien had a right to offer that allegiance. The very proviso to naturalize an alien, without inquiry as to the consent of his own country having been previously obtained, seems to be predicated on the principle for which he contended—that a man has the right to expatriate himself without leave obtained: if he has not, all our laws of this sort, by which we convert an alien into a citizen completely, must be acknowledged to be a violation of the rights of nations. How far a man, after having been naturalized at a period of life when his reason enabled him to choose, and to enter into a solemn obligation, and, after he has expressly entered into it, has a right, without the consent of the society, to quit that society, might be another question. After a citizen throws off his allegiance to this country, by leaving it and entering into a new obligation to some other nation, though he may have a right so to do, he has no right to return to his allegiance here without the consent of this society; and it is not a question of right, but of policy, how far we will readmit him to citizenship. It was, however, necessary that a man, casting off the allegiance of one country, must complete the act of dissolution in another. Therefore he considered that law of Virginia a strange solecism which provides for the throwing off allegiance within the community. The consequences of such a principle are not only destructive to the very form and body of civil society, but are unnatural. They present a civilized being belonging to no civil society on earth; for, in the intermediate state in which he stands, between the allegiance and country he has just disowned, and the allegiance and country to which he may intend to pledge himself, he is in the imaginary state of nature, which is, in reality, an unnatural state, for a being whose every faculty and quality constitute him a moral agent, surrounded by essential relations, and, of course, impel him to discharge duties of a social nature.

The British Government, by a want of conformity between their first principle, as laid down in their law books, and the practice of Parliament, have shown us a singular mixture of old principles which the nation has outgrown. It is a maxim with them that allegiance cannot be dissolved by any change of time or place, nor by the oath of a subject to any foreign power; yet

they naturalize by act of Parliament. They accept what they declare, by their theory of civil law, cannot be rightfully offered: nay, for one century the throne of England has presented monarchs who were foreigners. William of Orange was a Prince, but he was a subject, too, of a foreign power; and George the First was a member of the Germanic body. There is little danger that citizens, who are worthy of being so, will throw off their allegiance from the United States. The amendment which prohibits their readmission to a participation of all the rights of citizenship will be a sufficient penalty, if any be necessary. Though they may have a right to expatriate themselves, there cannot be inferred a right of returning; for every body politic must have the right of saying upon what terms they will accept any addition of aliens to their numbers; and the expatriated man, no longer belonging to this society, and being an alien, the Government may choose whether he ever shall enjoy its privileges again.

Mr. Baldwin expressed the strongest disapprobation at the idea of expatriating all those of our citizens who may have become subjects or citizens of another country. Many of them had been made citizens without any solicitation of their own and merely as a mark of esteem from the government under which they lived. They had no design whatever of renouncing their country. Yet the House of Representatives, all at once, declares them incapable of returning to their former situation.

Mr. Giles proposed a new clause which was, in substance, that all such aliens who had borne any hereditary titles, or titles of nobility in other countries, should make a renunciation of such titles before they can enjoy any right of citizenship. Mr. G. said if we did anything to prevent an improper mixture of foreigners with the Americans this measure seemed to him one that might be useful.

Mr. W. Smith was entirely opposed to the motion. The mind of the public is completely guarded against the introduction of titles and they will never be current here. You cannot hinder a man from calling another a viscount. You cannot declare this a crime.

He doubted whether the House had, by the Constitution, any right of making such a law. They were directed not to grant any titles, but their authority did not extend to the taking away of titles from persons who were not born in the country. The Marquis de Lafayette has been distinguished all over the Continent by the title of Marquis. Mr. S. hoped that he would one

day be again in America and then he would very likely be called Marquis again. By this law it would be illegal.

Why might there not be an interdiction against persons connected with the Jacobin Club? Why not forbid the wearing of certain badges of distinction used by Jacobins?

Mr. Madison approved of the motion. He regarded it as exactly to the business in hand, to exclude all persons from citizenship who would not renounce forever their connection with titles of nobility. The propriety of the thing would be illustrated by this reflection: that, if any titled orders had existed in America before the Revolution, they would infallibly have been abolished by it.

We have been reminded of the Marquis de Lafayette. He had the greatest respect for that character; but, if he were to come to this country, this very gentleman would be the first to recommend and acquiesce in the amendment on the table. He had urged the necessity of utterly abolishing nobility in France, even at a time when he thought it necessary for the safety of the state that the King should possess a considerable portion of power.

Mr. Giles declared that the requirement was in conformity with the Constitution, which declared no titled character admissible to any civil rank. The measure is a proper safeguard.

A revolution is now going onward to which there is nothing similar in history. A large portion of Europe has already declared against titles, and when the innovations are to stop no man can presume to guess. There is at present no law in the United States by which a foreigner can be hindered from voting at elections, or even from coming into this House; and, if a great number of these fugitive nobility come over, they may soon acquire considerable influence. The tone of thinking may insensibly change in the course of a few years and no person can say how far such a matter may spread.

Mr. Dexter opposed the resolution. He imagined that, by the same mode of reasoning, we might hinder His Holiness the Pope from coming into this country. And why not? priestcraft had done more mischief than aristocracy.

Mr. Madison said that the question was not perhaps so important as some gentlemen supposed; nor of so little consequence as others seemed to think it. It is very probable that the spirit of republicanism will pervade a great part of Europe. It is hard to guess what numbers of titled characters may, by such an event, be thrown out of that part of the world. What can be more reasonable than that, when crowds of them come

here, they should be forced to renounce everything contrary to the spirit of the Constitution?

Mr. Page was for the motion. It did not become that House to be afraid of introducing democratical principles. Titles only give a particular class of men a right to be insolent, and another class a pretence to be mean and cringing. The principle will come in by degrees and produce mischievous effects here as well as elsewhere. If such men do come here, nothing can be more grateful to a republican than to see them renounce their titles. This does not amount to any demand of making them renounce their principles. If they do not aspire to be citizens they may assume as many titles as they think fit. Equality is the basis of good order and society, whereas titles turn everything wrong. Mr. P. said that a scavenger was as necessary to the health of a city as any one of its magistrates. It was proper, therefore, not to lose sight of equality and to prevent, as far as possible, any opportunities of being insolent. He did not want to see a duke come here and contest an election for Congress with a citizen.

Mr. Lee.—As to mere empty names, as to sounds, we must be very corrupt, we must be very ignorant, if we could be alarmed by them. And in this free country every man had a right to call himself by what name or title he pleased; and, if the mover thought proper to change his name for any other name, sound, or title, it would neither add to nor diminish his real worth and importance; it would not give qualities to his heart which he had not before, nor detract from those he had. What were the mischiefs experienced in Europe from privileged orders? They did not flow from the names by which those orders were distinguished; they arose from the exclusive preference and privileges which those orders possessed in political rights and in property. Without these their titles would have been mere empty gewgaws, ridiculous in the extreme, and unworthy of the acceptance of any man of common sense. Titles, then, did not produce the mischiefs; but the privileges annexed to titles. In this country every citizen was equal to his fellow-citizen in political rights; and the laws of the respective States had wisely provided that property could not be accumulated in such a degree in the hands of individuals as to give them an improper influence in society. By the equal distribution of estates individuals are prevented from being so rich as to trample upon the necks of their equals. Great accumulations of property are more likely, in fact, to introduce the effects of aristocracy than are the ridiculous names by which individuals

may be distinguished. If it was the corrupting relation of lord and vassal which rendered a foreigner an unfit member of an equal republican government, he feared that this reasoning applied to the existing relation of master and slave in the Southern country (rather a more degrading one than even that of lord and vassal) would go to prove that the people of that country were not qualified to be members of our free republican Government. But he knew that this was not the case. Though in that House the members from the State of Virginia held persons in bondage, he was sure that their hearts glowed with a zeal as warm for the equal rights and happiness of men as gentlemen from the other parts of the Union where such degrading distinctions did not exist. He rejoiced that notwithstanding the unfavorable circumstances of his country in this respect, the virtue of his fellow-citizens shone forth equal to that of any other part of the nation.

Mr. Dexter would vote for the resolution if the gentleman would agree to an amendment, which was: "And, also, in case any such alien shall hold any person in slavery, he shall renounce it and declare that he holds all men free and equal."

Mr. Giles realized the sarcastic purpose of the gentleman's amendment, but deprecated it as an ungenerous fling at the members from the Southern States, who were contending as best they could with a local evil. As for himself, he lamented and detested slavery; but, from the existing state of the country, it was impossible at present to help it. He himself owned slaves. He regretted that he did so, and, if any member could point out a way in which he could be properly freed from that situation, he should rejoice in it. The thing was reducing as fast as could prudently be done.

Mr. Madison mentioned regulations adopted in Virginia for gradually reducing the number of slaves. None were allowed to be imported into the State. The operation of reducing the number of slaves was going on as quickly as possible. The mention of such a thing in the House had, in the mean time, a very bad effect on that species of property, otherwise he did not know but what he should have voted for the amendment of Mr. Dexter. It had a dangerous tendency on the minds of these unfortunate people.

Mr. Ames.—Can the advocates of Mr. Giles's amendment even affect apprehensions that there is any intention to introduce a foreign nobility as a privileged order? If they can, such diseases of the brain were not bred by reasoning and cannot be cured by it. Still less should we give effect by law to chimerical

whimsies. For what is the tendency of this counterfeit alarm? Is it to rouse again the sleeping apparitions which have disturbed the back country? Is it to show that the mock dangers which they have pretended to dread are real? Or, is it to mark a line of separation between those who have the merit of maintaining the extremes of political opinions and those whom this vote would denounce as stopping at what they deem a wise moderation? If that is the case, it seems that the amendment is intended rather to publish a creed than to settle a rule of naturalization.

Mr. Murray had no alarming apprehensions of nobility. There had once been in this House a baronet. He was there for two years before it was known, and it was then discovered that a baronet was a thing perfectly harmless. As for titles of nobility, he believed that all the sensible part of the community looked upon the whole as stuff. When Mr. M. contemplated this subject it reminded him of Holbein's "Dance of Death." He saw nothing in this country but the ghosts of nobility.

The amendment of Mr. Giles, relative to forswearing nobility, and that of Mr. Dexter, relative to forswearing slavery, were both voted down.

Mr. Murray then moved to extend the period of residence from *five* to *ten* years.

Mr. Baldwin said this was opposed to the Constitution which required a Senator to have lived only *nine* years in the country.

Mr. S. Smith was for the longer term, that the prejudices which the aliens had imbibed under the government from whence they came might be effaced, and that they might, by communication and observance of our laws and government, have just ideas of our Constitution and the excellence of its institution before they were admitted to the rights of a citizen.

Mr. Fitzsimons thought that ten years were much too long a time for keeping an alien from being a citizen—it would make this class of people enemies to your Government. He was firmly of opinion that emigrants deserved to be encouraged; and to discourage them was an idea which till this day he had never heard either in or out of the House. Nature seems to have pointed out this country as an asylum for the people oppressed in other parts of the world. It would be wrong, therefore, to first admit them here, and then treat them for so long a time so harshly.

Mr. Murray's amendment was negatived.

CHAPTER II

The Alien Laws

Resolutions of the Committee for the Defence of the Country, Giving President John Adams Power to Deport Aliens, Who Are Natives of Nations at War with the United States—Debate on the Resolution: in Favor, John Rutledge, Jr. [S. C.], John Allen [Ky.], Samuel Sewall [Mass.]; Opposed, Joseph McDowell [N. C.], and Albert Gallatin [Pa.]—The Resolutions Are Passed—Resolution of the Committee for Defence for Punishing Citizens Who Should Harbor Aliens—Debate on the Resolution: in Favor, Mr. Sewall, Nathaniel Smith [Conn.], Harrison Gray Otis [Mass.]; Opposed, James A. Bayard, Sr. [Del.], Mr. Gallatin, Robert Williams [N. C.]; the Resolution Is Passed—The Senate Passes a Bill Empowering the President to Banish Such Aliens as He Deems Suspicious Persons—The House Debates the Bill: in Favor, Mr. Otis, Robert G. Harper [S. C.], Jonathan Dayton [N. J.]; Opposed, Mr. Gallatin, Mr. Williams, Edward Livingston [N. Y.]—The Bill Is Passed.

DURING the Administration of John Adams the dominant Federalists took a partisan advantage of the general fear of foreign invasion due to the French war scare by attempting more stringently to restrict naturalization and thereby to cut off recruits from the Republicans, since the emigrants, fleeing in those revolutionary days from European or monarchical tyranny, naturally allied themselves with the radical and anti-Admistration party in their new home. A number of the emigrants, indeed, were educated Irish and Scottish radicals, who had taken up journalism in this country and had excited the special animosity of the Federalists by scurrilous abuse of the Administration and by open and unqualified indorsement of the French revolutionists.

On May 1, 1798, Samuel Sewall [Mass.], chairman of the Committee for the Defence of the Country, reported drastic resolutions (1) for the increase of the

term of residence required for naturalization; (2) for the registry of aliens; and (3) for the deportation, at the pleasure of the President, of alien males over the age of fourteen who were natives of countries at war with the United States.

Leading advocates of these resolutions were: John Rutledge, Jr. [S. C.], John Allen [Ky.], Mr. Sewall; leading opponents were: Joseph McDowell [N. C.] and Albert Gallatin [Pa.].

On Debarring Aliens from Citizenship

House of Representatives, May 2–21, 1798

The committee rose and reported the resolutions. The two first were concurred in, but, on the question being put on the third,

Mr. McDowell said it ought to be remembered that inducements had been held out to foreigners to come to this country, and many of them had come with a view of becoming citizens of this country, and many, he believed, were as good as any among us. It has been said our population was now sufficient, and that the privileges heretofore allowed to foreigners might now be withdrawn. In some parts of the country this might, in some degree, be the case; but he knew there were other parts which wanted population.

Mr. Rutledge said, in the situation of things in which we are now placed, the President should have the power of removing such intriguing agents and spies as are now spread all over the country. What, said Mr. R., would be the conduct of France if in our situation? In twenty-four hours every man of this description would either be sent out of the country or put in jail, and such conduct was wise. Was there nothing, Mr. R. asked, to admonish us to take a measure of this kind? Yes, there was. A gentleman from Kentucky [Mr. Davis] had said that a person was in that State delivering commissions into the hands of every man who was so abandoned as to receive them. Other means were also taken to alienate the affection of our citizens; and are we still, said he, to say we will not send these persons out of the country until a declaration of war is made? If these persons are suffered to remain France will never declare war, as she will consider the residence of these men among us as of

greater consequence than the lining of our seaboard with privateers or covering our coasts with men.

Mr. Allen said he would move an amendment which would supersede that under consideration by making the resolution extend to *all aliens* in this country. He wished to retain none of the restraints which are in the present resolution. The proposition goes upon the supposition that none but the citizens of a particular nation can be dangerous to this country; whereas he believed that there are citizens of several other countries who are as dangerous, who have dispositions equally hostile to this country with the French—he believed more so. He believed the whole country was aware of this. Mr. A. alluded to the vast number of naturalizations which lately took place in this city to support a particular party in a particular election. It did not appear to him necessary to have the exercise of this power depend upon any contingency, such as a threatening of invasion, or war, before it could be exercised. He wished the President to have it at all times. He moved an amendment to this effect, which went to enable the President to remove at any time the citizen of any foreign country whatever, not a citizen, regarding the treaties with such countries. If gentlemen took a view of the different states of Europe which had been subdued by the French, Mr. A. said, they would not think it either wise or prudent to wait for an invasion, or threatened invasion, before this power was put in execution. Venice, Switzerland, and Rome had been overcome by means of the agents of the French nation at a time when they were in a much less alarming situation than we are at present; and the first disturbance in those countries was made the pretext of open hostility. This has been the effect of *diplomatic agency;* of emissaries, within and without, who have bred quarrels for the purpose of forming pretexts for measures which have led to the subjugation of those countries. He believed there were citizens in this country who would be ready to join a foreign power in assisting to subjugate their country.

Mr. Sewall said civil policy regarded aliens in two lights, viz.: alien friends and alien enemies. He did not contemplate the making of this country a wall against all aliens whatever; or that no alien should come here without being subject to an arbitrary authority, such as is known only to the French Directory. If the existence of such a power as shall be able to place every alien in the country in a dungeon was necessary to quiet the fears and apprehensions of the gentleman from Connecticut, he should not be willing to grant it.

What, said Mr. S., is to be feared from the residence of aliens among us? Anything to ruin the country? He acknowledged many inconveniences arose from this circumstance, but more from our own unnatural children, who, in the bosom of their parent, conspired her destruction. But did the gentleman wish to increase the evil by saying that persons born in foreign countries, however regular and orderly their conduct may be, shall be liable to be imprisoned or sent out of the country, but that citizens of this country, however reprehensible their conduct, shall have nothing to fear? Unless the United States were inclined to assume the character of the Turks or Arabs, such a regulation as was recommended by the gentleman from Connecticut could not be adopted.

Mr. Gallatin would suggest that a part of the Constitution might be in the way of this motion.

By turning to the 9th section of the Constitution, it is found that the migration of such persons as any of the States shall think proper to admit shall not be prohibited by Congress prior to the year 1808. He understood it, however, to be a sound principle that alien enemies might be removed, although the emigration of persons be not prohibited by a principle which existed prior to the Constitution, and was coeval with the law of nations. The question was, therefore, whether the citizens or subjects of nations in actual hostility can be considered as alien enemies. The term "actual hostility" is vague in its nature and would introduce doubt as to its true import.

The resolutions were recommitted to the Committee for the Defence of the Country. On May 21 Mr. Sewall, the chairman of the committee, made its report, which was (1) that the term of residence required of applicants for citizenship be extended to fourteen years, and (2) no alien coming from a country at war with us shall be admitted to citizenship while such war continues. The first resolution was passed by a vote of 41 to 40, and the second agreed to without division.

When the Republicans came into power they repealed this bill (April 14, 1802), and reëstablished the former conditions of naturalization.

On May 22, 1798, there was presented to the House the third of the original resolutions of the Committee for the Defence of the Country, that respecting the deportation, at the pleasure of the President and by his procla-

mation, of aliens who were born in a country which was either at war with the United States or was threatening invasion. To the original resolution was added a section by which the execution of the act, in relation to these aliens and *all who shall harbor them,* was committed to all the judicial and ministerial officers of the Federal and State governments.

The debate on this resolution was long and animated. The chief speakers in its favor were Mr. Sewall, Nathaniel Smith [Conn.], Harrison Gray Otis [Mass.]; its leading opponents: James A. Bayard, Sr. [Del.], Albert Gallatin [Pa.], and Robert Williams [N. C.].

On Punishing Harborers of Aliens

House of Representatives, May 22–June 26, 1798

Mr. Bayard said the last section of this bill contained a principle contrary to all our maxims of jurisprudence, viz.: to provide punishment for a crime by a law to be passed after the fact is committed. Whether the crime to be punished is to amount to treason, misprision of treason, or be only a misdemeanor is left uncertain. It was his opinion that laws could not be too definite; but it would be impossible in this case for the person committed to know what crime he had committed, or to what punishment he was liable. He moved, therefore, to amend the bill by making the crime a misdemeanor, punishable by fine and imprisonment.

Mr. Sewall acknowledged there was a good deal of uncertainty in that part of the bill mentioned, but the select committee did not see any way of remedying the evil without making the law too mild in its operation. In some cases the offence would amount to high treason, the punishment for which is death; in others, to misprision of treason, the punishment for which is imprisonment not exceeding seven years and a fine not exceeding one thousand dollars. As the offence might, therefore, sometimes amount to high treason, there would be an impropriety in making it uniformly a misdemeanor.

If an alien should have resided here for a number of years and he should turn out to have been a spy, and a citizen of the United States should have harbored and concealed the said alien, knowing him to have been a spy, he would be chargeable with high treason for aiding and abetting the enemies of the

United States within its territory, or, at least, a misprision of treason.

But the gentleman from Delaware was mistaken in his idea that it was intended to try an offender by a law passed after the offence was committed. By the expression "as by law is or shall be declared" was meant only such law as should be passed between the present time and the time of committing any offence.

The question of Mr. Bayard's amendment was put and carried, 44 to 25.

On motion of Mr. Bayard the blank for containing the amount of the penalty in the amendment just carried was filled with one thousand dollars.

Mr. N. Smith hoped this amendment would not be agreed to. He believed the penalty might, in some cases, be too severe, and, in others, by far too mild. This being the condition of things, to make an uniform punishment for all cases, whether highly criminal or no crime at all, cannot be proper.

Mr. Bayard hoped the amendment would be agreed to. He did not know that a greater misfortune could happen to any man than to live in a country where the laws are so indefinite that a person cannot ascertain when he commits an offence, or what is the penalty of an offence when it is committed. The fact was of a definite nature and a definite punishment ought to be made for it. What is the fact? It is the harboring and concealing of an alien enemy after the proclamation of the President. Gentlemen say this offence may amount to treason, misprision of treason, or other offence. If the offence could amount to treason he owned he did not understand the bill, because the crime of treason is defined by the Constitution, and could not be varied by any law of Congress. If, then, the fact amount to treason, it will not be included in this law. If gentlemen wished to punish persons in exact conformity to their degree of offence they ought to prepare a scale of offence for that purpose.

Mr. Sewall said this bill declares that a person harboring an alien enemy shall be a suspected person; but the crime and punishment must be ascertained by other laws; and by these offenders are to be punished agreeably to their offences, whether they be great or small.

Mr. Gallatin said, if he understood the gentleman from Massachusetts, it was not the object of this bill to define the

nature of the offence of which a person shall be guilty or the punishment for it, for harboring and concealing an alien enemy, but only that certain circumstances should render a man a suspected person. This, to him, was altogether a new legislation.

If he understood the bill as it stood rightly, a person may be apprehended and imprisoned on account of his having harbored and concealed alien enemies; yet the gentleman from Massachusetts says this is in itself no crime; for, if it were a crime, it ought to be punished in the way proposed by the gentleman from Delaware, but he states it to be only a sufficient ground of suspicion. This, Mr. G. said, was not only contrary to every principle of justice and reason, but to the provisions of the Constitution. The Constitution says: "That no person shall be deprived of life, limb, or property without due process of law." But here certain persons may be deprived of their liberty without any process of law, or being guilty of any crime. Yet the gentleman from Massachusetts says that this bill does not define a crime or award a punishment. But, Mr. G. said, this assertion was not correct; for there was a new crime instituted, which was that of being a suspected person, and the overt act which is to be evidence of that crime is the harboring and concealing of an alien enemy, and the punishment is to be apprehension and imprisonment until it shall be found what law the prisoner has offended.

Mr. G. said he was ready to acknowledge that, where a man commits an offence, he ought to be punished; but he could not consent to punish any man on suspicion merely. He therefore moved to recommit the bill. He did this because he thought the whole of the bill vague in its nature. He wished it to be more in detail, and that the offences to be punished should be defined; for it was remarkable that every section of the bill concluded with these singular words: "Subject, nevertheless, to the regulations which the Congress of the United States shall thereafter agree and establish." So that, instead of deciding what the law should be, it gives the President the power of saying what it is; subject to the after-regulations of Congress. He wished now to make the law to declare what the offence should be, and what the punishment, and not leave it to the President to make what regulations he shall think proper. If not, the whole of the bill might as well be in two or three words, viz.: "The President of the United States shall have the power to remove, restrict, or confine alien enemies and citizens whom he may consider as suspected persons." When Congress attempted to legislate they ought not to do it in this way. When

the resolution was agreed to, authorizing this bill to be reported, he expected the committee would have defined the nature of offences and their punishments, and not reported the bill in the vague way in which it is before the House, especially as this appears not to be meant for a temporary, but a permanent, law.

If gentlemen examine the third section of the bill it will be found that all judges, justices, marshals, sheriffs, and other officers, and all the good people of the United States are bound to do—what? Not to execute any law; but to carry into effect any proclamation, or other public act, of the President. So that, instead of the judicial and any other officers of the United States, and the people at large, being obedient to the laws, they are to be obedient to the will of the President.

The last clause of the bill, which does not relate to aliens, but to our own citizens, is very objectionable. It is in the shape of a penal law, and the crime it defines is the harboring and concealing of alien enemies. Now, it is said that this crime may amount to high treason by its being construed that an offender has adhered to the enemies of the United States, knowing them to be such, or it may be no offence at all. But the provision is general; and a man guilty of no offence is liable to be apprehended and imprisoned equally with the highest offender under this law.

Mr. Sewall said that it is necessary to provide for the public safety, and in all countries there is a power lodged somewhere for taking measures of this kind. In this country this power is not lodged wholly in the Executive; it is in Congress. Perhaps, if war was declared, the President might then, as Commander-in-Chief, exercise a military power over these people; but it would be best to settle these regulations by civil process. They would be regulated by the treaties as well as by the laws of nations. The intention of this bill is to give the President the power of judging what is proper to be done, and to limit his authority in the way proposed by this bill.

Mr. Otis said that, unless gentlemen were disposed to suffer a band of spies to be spread through the country from one end of it to the other, who, in case of the introduction of an enemy into our country, may join them in their attack upon us and in their plunder of our property, nothing short of the bill like the present can be effectual.

He was willing to say that, in a time of tranquillity, he should not desire to put a power like this into the hands of the Executive; but, in a time of war, the citizens of France ought

to be considered and treated and watched in a very different manner from citizens of our own country.

As to the objection made by the gentleman from Pennsylvania, that the bill provides a punishment for suspected persons and that the word "suspected" was indefinite, Mr. O. asked whether men are not usually arrested on suspicion? When information is lodged against a man for committing an offence he is suspected of being guilty and imprisoned until he can be examined.

Mr. Nathaniel Macon [N. C.] made a motion to recommit the whole bill, which was negatived—37 to 36.

Mr. Gallatin then made a motion to recommit the third section, which was negatived by the casting vote of the Speaker, there being 38 votes for it and 38 votes against it.

The bill was read the third time when—

Mr. R. Williams moved a recommitment of the bill. He said his objections did not lie so much against the provisions respecting aliens, as to the power proposed to be given to the President of issuing proclamations, which are to be binding on the judges and other officers with respect to our own citizens. He would wish to designate every offence and its adequate punishment, as far as it could be done. In order to effect this he made his motion.

Mr. Sewall said the gentleman from North Carolina seemed not to object to the powers given to the President by the first and second sections of the bill, but he did not wish him to have any officers to execute his powers. If the President is authorized to issue orders, he must be authorized to require the aid of proper persons to execute them.

Mr. Gallatin called for the yeas and nays upon this question, which, being agreed to, he hoped this bill would be recommitted. He had no doubt that the committee, by paying due attention to the subject, instead of this general and vague bill might report such rules and regulations as would be proper to be adopted on this occasion. He recollected seeing a bill from the Senate on this subject in which something of this kind was done [see the following debate]; and, though he did by no means approve of that bill, yet it showed that the thing was not impossible. The objection made against a recommittal of this bill was that it was necessary to do something to provide means for securing and removing alien enemies, which did not apply as an argument against the recommitment of the bill. It was a good reason why a bill should be passed, but no reason why it should pass in its present form. The present bill, Mr. G. said,

was grounded upon the principle that the President of the United States shall have the power to do by proclamation what ought only to be done by law.

The power of the President, Mr. G. said, did not stop at aliens; it extended to all the citizens of the United States. The object of the last section provides that justices, judges, marshals, sheriffs, and the people at large shall perform a duty which is undefined. But the gentleman from Massachusetts says this is right, because the power given to the Executive by this bill is also undefined. This is the foundation of all the objection made to this bill; it is to the want of legislation in it, which leaves not only alien enemies, but citizens of the United States, to the will of the President.

He could conceive that the House might take into consideration the nature of the powers vested in the President and inquire what will be the duties required to be performed by the several officers of the Government to carry into effect those powers. Those powers are to apprehend, restrain, secure, and remove alien enemies and to sequester their property. As to the removal of aliens, he could not see what justices and judges had to do with it; but, if they had anything to do with it, Congress ought to say what.

The last part of the third section, he said, was as objectionable as any other. It defines the crime in two words: "harboring and concealing," and the penalty, if the accused is found guilty of this vague and uncertain charge, is imprisonment not exceeding seven years and a fine not exceeding one thousand dollars. So that, if a person be found guilty of harboring and concealing an alien enemy, however trifling the expense may be, his punishment will be left wholly to the discretion of the court. The only power of the jury will be to decide on the fact; and, if a citizen has harbored for one night, however undesignedly, an alien enemy, he must be found guilty, leaving it altogether to the court to judge of the criminality of the act and to affix the degree of punishment. He thought this part of the law ought to be more clearly defined. It ought to distinguish between cases of misdemeanor and those cases which might arise merely from ignorance and in which no offence at all might exist. He hoped, therefore, that the bill would be recommitted.

The question on recommitting the bill was put and carried, 46 to 44.

The bill was modified by the committee in a way to

remove the objections of its opponents, and passed on June 26 by a vote of 56, the negative not being taken.

Before the passage of the preceding bill one was received from the Senate, empowering the President to order such aliens as he deemed dangerous to depart from the country, and, upon their failure to do so, to imprison them for three years and debar them thereafter from becoming citizens. If any alien should return after banishment he was to be imprisoned, with hard labor, for life. Ship captains were ordered to report all aliens on their vessels, on pain of a fine of $300.

In the discussion which ensued in the House on this bill many of the arguments of the preceding debate were, naturally, repeated.

The discussion, however, soon lifted from the particular issue as to the President's power over aliens to the general ones of all his powers and the powers of Congress under the Constitution. For the first time in American politics the line was clearly drawn between the *strict* and *loose* construction of the Constitution, the Democratic Republicans adhering to the letter of the Federal charter and the Federalists construing it to permit presidential and congressional authority over matters not specifically granted therein.

The leading speakers in the House in support of the Senate bill were Mr. Otis, Robert Goodloe Harper [S. C.], and Jonathan Dayton [N. J.]. Those opposing it were Mr. Gallatin, Mr. Williams, and Edward Livingston [N. Y.].

Strict and Loose Construction of the Constitution

House of Representatives, June 8–June 21, 1798

Mr. Gallatin said it has been declared by the gentleman from Massachusetts [Mr. Sewall] that this power over aliens is included in the power given to Congress to regulate commerce; the gentleman from Delaware [Mr. Bayard] believes it to be contained in that clause of the Constitution which gives to Congress the power to lay and collect taxes, by which he argues power is also given to provide for the common defence

and general welfare; but another gentleman from Massachusetts [Mr. Otis] and a gentleman from Connecticut [Mr. Dana] drew this power from that which they say every government must have to preserve itself.

Mr. G. said he would offer a few remarks upon each of these reasons. In the first place, the power was said to be included in the power to regulate commerce. But this bill is not intended for any commercial purpose; it is wholly of a political nature, intended to effect political ends, and does not relate to aliens as merchants. If Congress has any power which they can exercise on the persons of aliens, it might relate only to merchants, to them as merchants—to their professions, not to their existence as men.

With respect to the clause of the eighth section, contended for by the gentleman from Delaware, it was in the following words: "Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States," and that no gentleman contended that its meaning was to give power to Congress, in the first place, to lay taxes, and, in the next place, to provide for the common defence and general welfare of the United States. But the obvious and universally received meaning of the last words was not to give a general power altogether unconnected with the remaining part of the sentence, but to define the purpose for which taxes should be laid. Had the construction of the gentleman from Delaware been intended, the power would have been given in a distinct paragraph, in the same manner as all the other powers are given, instead of placing the words in this way in the middle of a paragraph relating to a quite different subject. If this new construction was adopted there would have been no need to have enumerated the powers given to Congress in this and other sections, because such a broad power as that contended for would have embraced every other.

Nor is this all. The twelfth [1] amendment of the Constitution seems to have apprehended some improper use being made of the sweeping clause by taking it as a ground for power never intended to be given, and, therefore, it declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"; but, if the construction now spoken of were to prevail, this amendment could have no application; for, if all the powers are delegated to Congress by that clause, how

[1] Now the tenth.

could it be said that the powers not delegated were reserved to the States?

To show that, at the time the Constitution was adopted, no such opinion as this prevailed Mr. G. referred to the debates had upon it in the Pennsylvania convention. He particularly quoted the sentiments of Mr. Wilson, who spoke of this provision for raising taxes as being necessary for the common defence and general welfare. Mr. Wilson expressed himself as follows: "Certainly Congress should possess the power of raising revenue from their constituents for the purpose mentioned in the eighth section of the first article, that is, to pay the debts and provide for the common defence and general welfare of the United States"; and again: "I think it would be very unwise in this convention to refuse to adopt this Constitution, because it grants Congress power to lay and collect taxes for the purpose of providing for the common defence and general welfare of the United States." Mr. G. also quoted from "The Federalist," written by the members of the Federal convention in defence of the Constitution before its adoption.

Mr. G. said he was well informed that those words had originally been inserted in the Constitution as a limitation to the power of laying taxes. After the limitation had been agreed to, and the Constitution was completed, a member of the convention [1] (he was one of the members who represented the State of Pennsylvania), being one of a committee of revisal and arrangement, attempted to throw these words into a distinct paragraph so as to create, not a limitation, but a distinct power. The trick, however, was discovered by a member from Connecticut,[2] now deceased, and the words restored as they now stand. So that, Mr. G. said, whether he referred to the Constitution itself, to the most able defenders of it, or to the State conventions, the only rational construction which could be given to that clause was that it was a limitation, and not an extension, of powers.

Another gentleman from Massachusetts [Mr. Otis] has taken a kind of general ground, supposing that there must exist certain general powers in Congress which are equal to meet any possible case. He could not say that he rightly understood the meaning of that gentleman. If he meant that all power should be vested in Government, because it is possible that occurrences may arise which will call for the exercise of them, he would not hesitate to say that doctrine is contrary to the Constitution, for that has put limits to the powers of the Government, and has

[1] Gouverneur Morris is referred to.

[2] Roger Sherman is referred to.

said certain things shall not be done by it. For instance, it might be thought necessary, though neither an invasion nor a rebellion had taken place, to suspend the habeas corpus act, as had been the case in Great Britain some time ago. It was there represented that a dangerous conspiracy existed against the Government, and that, in order to meet it with effect, it was necessary to suspend the habeas corpus act. Reasoning on the same ground, the gentleman from Massachusetts might say that a dangerous conspiracy now exists here, that he has got hold of the threads of that plot which the gentleman from South Carolina [Mr. Harper] has pledged himself to this House a few days ago to pursue through all its ramifications, and move for a suspension of the habeas corpus act. But the Constitution would be directly against such a motion, as it is there said "it shall not be suspended but in cases of actual rebellion or invasion." So that this Government cannot do everything which the gentleman may suppose necessary to be done. Or did the gentleman mean that Congress ought to exercise all the powers that may be vested in Government in this country? Such a sentiment is also flatly contradicted by the Constitution, as it recognizes a division of powers between the general and State governments. Thus, in the instance before the committee, Congress has the power to declare war and to punish any persons guilty of treasonable practices, but what relates to aliens as suspicious characters the Government of the United States has no cognizance of. It is a matter which remains with the State governments; and, if there was any necessity for passing a law on the subject, there could be no doubt it would be done by the proper constitutional authority—the State governments. Or did gentlemen mean that the power for providing for the common defence should absorb all other powers, and that, if this power was limited, the Constitution is not worth a farthing? Did he wish, except the Constitution would authorize an act of this sort, it should be overset? Did he like the Constitution only for the powers it gave, and not for the restraints it put on power? Did he intend to declare himself an enemy to every part of the Constitution which restrains the power of the general Government? He could not suppose that this was his opinion; and, if it was not, he did not understand what he meant.

As to the general declaration contained in the preamble of the Constitution, he would remark that the Articles of Confederation under the old Congress had several expressions of the same nature. The power was there said to be given for the general defence, showing that to have been the object of

the Union. The same articles gave power to Congress to declare war, and several other powers of a general nature in which such a power might equally be supposed to be included; and it was on this account that he stated that the old Congress never acted on this subject, merely because the general powers of both governments being nearly similar, the opinion of the old Congress, in relation to their own authority, was applicable to the present instance.

In supposing this bill it might not be supposed to be necessary to go further than to show that the power of passing a law like the present had not been given to this Government. But it so happened that, supposing he was mistaken in that position, another clause expressly prohibited the exercise of that power for the present, even if it did exist at all. He would, therefore, proceed to notice some of the objections which had been urged against his observations on the ninth section of the first article of the Constitution, which says that Congress shall not prohibit the migration of such persons as the States chose to admit.

Mr. G. took it for granted that, whatever is not prohibited is permitted; and, so long as no law of any State prohibits the admission of aliens, he supposed all are admitted. Indeed, the admission is recognized by laws in every State.

Again, it was said that this clause relates solely to slaves, as an exception granted of the power to regulate commerce. In answer to this he said that the word migration, as contradistinguished from the word importation, could apply only to a free act of the will; and to the voluntary arrival of free persons coming to this country, in the same manner as the word importation could apply only to slaves brought into the United States without their consent; and the word persons was of the most general acceptation, and could by no means include free emigrants. That this even was well understood at the time of the adoption of the Constitution, he would prove by the following quotation from James Wilson's speech in the debates of the Pennsylvania convention: "The gentleman (Mr. Findlay) says that it is unfortunate in another point of view. It means to prohibit the introduction of white people from Europe, as this tax may deter them from coming among us; a little impartiality and attention will discover the care that the convention took in selecting their language. The words are the migration or importation of such persons shall not be prohibited by Congress prior to the year 1808, but a tax or duty may be imposed on such importation. It is observable here that the term migration is dropped, when a tax or duty is mentioned; so that Con-

gress have power to impose the tax only on those imported."

The argument, therefore, stood thus: Either the general power of preventing the migration of aliens is included in the powers given by the Constitution to Congress, or it is not. If it is not included, and that was his decided opinion, the present bill is unconstitutional. But if by implication, it may be derived from any of the specific powers given to Congress, whether that of regulating commerce, of declaring war, or of any other, or if it be included in a supposed general power of providing for the common defence and general welfare, even in that case, its exercise is prohibited to Congress by this clause till the year 1808, and, on this ground, the present bill is also unconstitutional.

Mr. G. thought when a constructive power of this kind was claimed it was time that a stand should be made against it. He looked upon the provision not only as unconstitutional, but as of a most arbitrary nature, grounded upon a supposition which has not been proved, and upon another which does not exist. The supposition is not proved that the measure is necessary on account of danger to be apprehended, from there being aliens resident in the country dangerous to its peace. The persons from whom this danger is apprehended are either alien friends or alien enemies. So far as relates to the latter they are provided for in another bill. The whole of the arguments on this bill, therefore, are applicable only to alien friends. And here he must take notice that, although Congress has not the power to remove alien friends, it cannot be inferred, as had been objected, that it had not the power to remove alien enemies; this last authority resulted from the power to make all laws necessary to carry into effect one of the specific powers given by the Constitution. Among these powers is that of declaring war, which includes that of making prisoners of war and of making regulations with respect to alien enemies, who are liable to be treated as prisoners of war. By virtue of that power, and in order to carry it into effect, Congress could dispose of the persons and property of alien enemies as it thinks fit, provided it be according to the laws of nations and to treaties.

No facts had appeared, with respect to alien friends, which require these arbitrary means to be employed against them. If there are gentlemen possessed of facts of this kind, it is their duty to lay them before the House. But, while these proofs are held back, gentlemen have a right to say no necessity exists for such a measure. He supposed gentlemen who spoke with so much confidence on this subject must be possessed of facts unknown

to him, otherwise they would be unjustifiable in creating a groundless alarm; but the House had a right to inquire what the facts are, if they did exist, and whether they relate to alien friends or alien enemies.

He would not only say that this bill was founded on a supposition which was not proved, but, also, that it took for granted another position which did not exist. If there be any danger, it is certainly such as may be punished by the laws of our country, without adopting a measure of this kind. The laws of the United States will reach alien friends, if guilty of seditious or treasonable practices, as well as citizens. And, if the law is not at present sufficient to reach every case, it might be amended. He wished all crimes and punishments to be accurately defined; and he hoped gentlemen who profess to be warm supporters of this Government and Constitution, will not say that it is not in our power to reach the object. And, if it be necessary to send certain persons out of the country on account of their malpractices, he trusted laws would be framed for the purpose of punishing them, and that they would not be left without trial, subject to the arbitrary control of one man only.

This bill not only was grounded upon a supposed necessity which did not exist, but it appeared to him that if it was passed, a bill of a similar nature might be brought in in relation to citizens of the United States. This bill is called a bill concerning aliens; but in its consequences it affects citizens as much as aliens; for he called upon the supporters of this bill to show him a single clause in the Constitution which has been referred to in support of this bill, which would not equally justify a similar measure against citizens of the United States. And, so far as relates to the necessity of the bill, the plea may be equally made against citizens as against aliens; for what is the ground upon which this power is claimed? It is by virtue of the power vested in Congress to regulate commerce. And what is this power? It is "to regulate commerce with foreign nations and among the several States, and with the Indian tribes." Therefore, if, by virtue of the power of Congress to regulate commerce with foreign nations, they can remove foreigners from the country by the same reasoning (bad reasoning he knew it was), they had a similar power of removing citizens of the several States. And, when another gentleman tells us that the power is claimed under certain powers given to Congress to provide for the common defence and general welfare, would it not apply to citizens as well as aliens? It certainly would, since they might argue that seditious and turbulent citizens might be as

dangerous to the peace of the country as aliens of a similar description; and, when gentlemen are disposed to treat the Constitution in this way to come at aliens, he had no doubt they will be equally ready to do it against citizens whenever they shall wish to do so.

Or will gentlemen say that the Constitution affords a security to citizens which it does not extend to aliens? He knew the rights of aliens are limited; but, if we can dispense with the law toward them, we may also do it with respect to citizens. The trial by jury does not speak of citizens, but of persons. What security, said Mr. G., can citizens have when they see a bill like the present pass into a law?

Again, with respect to the writ of habeas corpus, what do gentlemen say? They say it is only to prevent any man from being imprisoned in an arbitrary manner; and that, as the present bill describes the cases in which a man is liable to arrestation and imprisonment, it cannot be a suspension of that law; that is to say, the writ of habeas corpus is designed to prevent arbitrary imprisonment, or what the gentleman calls illegal imprisonment; but, according to this doctrine, if you give, by law, the power to the President of arbitrary imprisonment, that power, being thus given by law, is on that account no longer illegal nor arbitrary. That was the kind of security which citizens might expect to derive from the clause of the Constitution which related to the writ of habeas corpus. That privilege was to be done away by a legal distinction.

By the seventh amendment[1] to our Constitution, it is provided that "no person shall be deprived of life, liberty, or property without due process of law." According to the doctrine of the gentleman, Congress may give, by law, the power to the President, or anyone else, to deprive a citizen of his liberty or property, and the act of giving that power by law will be called the due process of law contemplated by the Constitution.

A gentleman had said that States must claim only local powers, general ones being placed in the general Government. But the present bill was more of a local than of a general nature. Those States whose population is full, and to which few migrations take place, are little concerned in this question, unless, indeed, to check the population of other States and to keep a preponderance in their hands be an object with them. It was of consequence only to those States whose population is thin and whose policy it has always been to encourage emigration. Among

[1] Now the fifth.

these he placed the State of Pennsylvania. Indeed, he had always thought it was the general policy of this country; he believed it had only been the violence of party which had created any difference of opinion on the subject. It had been an established principle in Pennsylvania, from its first establishment to the present time, and every encouragement had been held out to emigrants of all nations. On this account, if this bill passes, there will be ten times the number of people under its operation, and the arbitrary power of the President, in this State than there will be in all the New England States put together. Emigration, he said, had been very useful to Pennsylvania. It is owing to it that its population had, within a little more than a century, reached its present extent. Nor had the mixture of emigration from Great Britain and Germany produced any bad effect upon the policy of the State. He believed it could boast of civil establishments as wise and as good as any of her sister States. And, in such a bill, assuming a power belonging to herself and not to the United States, and affecting her population and prosperity to such an extent, Pennsylvania was immediately and deeply concerned.

Let it be remembered that the Declaration of Independence, in the enumeration of the complaints of America against the King of Great Britain, states that "he has endeavored to prevent the population of these States, for that purpose obstructing the laws for the naturalization of foreigners, refusing to pass others to encourage their migration hither," etc. The present bill related not to any political rights; it affected the civil rights, the personal liberty, the property of aliens. It subjects them to a removal, upon suspicion, and that at the will of one man. It was not only a refusal to encourage migrations, it was a bill to prevent migrations.

Mr. Otis said it could not be denied that it was the design of the Federal Constitution to embrace all our exterior relations. The great objects of peace and war, negotiations with foreign countries, the general peace and welfare of the United States, must be provided for and maintained by the national Government; no other authority is competent to these great duties; no other can judge of the necessity of measures preparatory to the national defence nor enforce such measures with general effect.

If Congress has the right to defend the Union it has certainly the right to prepare for defence. And, if any specific power had been claimed by the individual States which was inconsistent with this general power, it must vanish before the

obligation of the general Government to provide for the common defence.

But he did not think the power of admitting foreigners, which it was contended for by the gentleman from Pennsylvania remained with the States, was inconsistent with the right of expelling dangerous persons, which he claimed for the general Government. That gentleman, Mr. O. said, had interrogated him in a very extraordinary manner. He has asked whether he wished to overturn the Constitution? He should certainly answer: No; he did not wish to overturn it, but to preserve it against the attempts of insidious and dangerous aliens, and he thought this bill necessary for that purpose. He considered and followed the Constitution as a lamp to his path; whereas the gentleman from Pennsylvania [Mr. Gallatin] would make the Constitution a mere *ignis fatuus,* calculated to bewilder and mislead.

Mr. O. agreed that the construction was just that which the gentleman put upon the first article of the eighth section of the Constitution, and that to provide for the common defence and general welfare was the end of the powers recited in the first part of that section, and that the powers were merely the means. But this is equally the end of all the other powers given to Congress by all the articles of this section, so that these words might, with propriety, be understood as if they were added to every clause in it, and thus, from the whole section, it appeared clear that Congress has a right to make war for the common defence and general welfare, and, of course, to do everything which is necessary to prepare for such a state. And shall we, said Mr. O., allow that the States have a right to defeat this power? If we find men in this country endeavoring to spread sedition and discord; who have assisted in laying other countries prostrate; whose hands are reeking with blood; and whose hearts rankle with hatred toward us—have we not the power to shake off these firebrands? Certainly we have. They were admitted here under the rights of hospitality, exercised by nations toward friendly strangers; but, when they become dangerous and hostile, we certainly have a right to send them away. What will be our situation if any one of the States may retain a number of men whose residence shall be provably dangerous to the safety of the United States? If such State should judge proper to make regulations on the subject it could only banish a person from its territory. So that persons of this description, stamped with infamy in their own country and plotting treasons against ours, may remain in some part of the territory of the United States,

while Congress has not the power to get rid of them until all the States concur in the same object.

If this was the dilemma into which we are reduced by the Federal compact, it might as well have never been made, for a government that is prevented from exercising an authority which may be necessary to its existence is not better than no government at all; and, if the individual States have the means of frustrating the views of the general Government in the exercise of its powers, the present Constitution would have no advantage over the old Confederation. The simple ground on which the question stood was this: Can the right of expulsion be exercised by the United States without infringing the right of admission which is reserved to the individual States? And, gentlemen, to demonstrate the collision of these powers, put an extreme case, and suppose that Congress may send out of the country all the aliens who should be admitted by any State, and thus render nugatory the right of importation reserved to the States. But this is the old-fashioned way of arguing from a presumed abuse of power. It is one thing to banish all aliens indiscriminately and a very different thing to banish a few individuals of suspicious character. It is in the nature of a punishment for supposed offences, and there is no fear of involving innocence with guilt. Aliens do not claim an exemption from punishment for offences against the United States—when found guilty of crimes the courts can sentence them to be imprisoned or to be punished with death. And yet the gentleman from Pennsylvania might as well say that such sentences are unconstitutional, because the courts might imprison or hang up aliens as fast as they are admitted into any State.

Mr. O. contended that the limitation of the power of admitting aliens, which is reserved to the States till the year 1808, implied that Congress might prohibit the migration of foreigners after that time, so that this ninth section of the Constitution is only an exception from the general power, and must be construed strictly. If the United States have not this right they cannot authorize the President to send away a public minister who should threaten to convulse the nation, but a State might retain such a minister contrary to the wishes and interests of the United States.

Mr. O. wished gentlemen to inquire whether or not it is now necessary to exercise this power. Gentlemen call for evidence of any alien's acting improperly in this country. If, he said, proof positive and direct could be adduced the laws of the country might be sufficient to punish them; but is there not

sufficient reason to be alarmed on this subject, not only from the fate of other countries, but from what has happened under our own eyes. Do we not know, said he, that the French nation have organized bands of aliens, as well as of their own citizens, in other countries to bring about their nefarious purposes. It is well known that their object is to divide and command; and they furnish the most dreadful commentaries upon this old maxim. By these means they have overrun all the republics in the world but our own. Do we not, said he, read the history of their dark maneuvers in the fate of Holland and Switzerland? And may we not expect the same means to be employed against this country? We certainly might.

Mr. O. said that this diplomatic agency had been in full motion in the United States; he might mention names; but it was well known to every gentleman of this committee that a Frenchman of a literary and intriguing character, who was formerly a member of the Club Breton, and was doubtless in the confidence of the Directory, who has for a long time sojourned in Pennsylvania, who had explored the Indian country and traveled through other States, had lately taken flight. It was also well known that a citizen of Pennsylvania, conspicuous for his attachment to the French, had followed him. It was lately discovered that another Frenchman who resided at New York and who, he believed, was naturalized, is in the constant habit of corresponding with the Directory, a man, who, though holding no known agency under them at present, has heretofore agitated the Continent by his intrigues and may be looked upon as in their employ. And the same kind of correspondence is traced up to our own citizens.

Mr. O. concluded by saying the times are full of danger and it would be the height of madness not to take every precaution in our power. The right contended for was of inestimable value to the United States, but to the individual States it would be of no importance. The provisions of the Constitution were plain and adequate to all the exigencies of the nation, and it was wrong to waste that time in nice and unnecessary arguments which ought to be employed in the most active preparations and decisive measures. He hoped, therefore, the section would be retained.

Mr. Harper said it was not without difficulty that he could prevail upon himself to believe that the objections to this measure, on Constitutional grounds, were serious. He could not help being reminded, when he heard these objections urged, of the saying of a witty writer upon a book still more sacred

than the Constitution, viz.: "That it was a rich field into which all parties sent their troops to forage." Mr. H. said if it be wished to restrain a foreign enemy, or domestic traitors, and effectual means are proposed, the House is told, by a novel discovery, that we have not the power of self-defence; though we see the knife of the traitor held to our throats, we are to wait until the State governments will come in and snatch it away. Strange would it be if the Government could thus exist; strange would it be if it had not the power of suppressing domestic traitors!

It was said that State governments only had cognizance over aliens; but have these governments any knowledge of what relates to our foreign relations, or the common defence of the Union? Certainly not. By admitting the doctrine which these gentlemen advocate, what is the result? One State might expel persons as dangerous, but an adjoining State might be of opinion that the person ought not to be expelled; and, of course, such a person would remain at liberty to act against the Government and people of the United States; and, if the safety of the Government of the Union is to depend upon the discordant wills of sixteen States, deplorable and debased indeed would be its situation.

Mr. H. allowed that the States have a right to admit such foreigners as they think proper till a certain period; but the general Government is, in the meantime, charged with the common defence and welfare of the United States, and, in pursuance of those objects, it certainly has a right to pass all necessary laws, and, if any of these laws should require certain aliens to be sent out of the country, what has appeared to be necessary for the general welfare cannot be carried into effect if the States have a right to insist upon keeping their aliens.

The first paragraph of the ninth section of the Constitution does not say Congress shall never have the power specified, but that it shall not exercise the power until the year 1808, which makes it pretty evident that the provision had relation only to slaves. If it had related to emigrants it would have been without any limitation of time. If Africans, or slaves, had been inserted by name, the thing could not, in his opinion, have been more clear.

With respect to citizens, we know they cannot be proceeded against in this way. To argue the abuse of power from its existence was a common subterfuge of gentlemen, which, if not disregarded, would prevent the giving any power whatever, and he desired no better principle to completely stop the wheels of

Government, and to lay it prostrate at the feet of its external and internal foes.

But it was said no necessity exists for this measure, and gentlemen call for proof of any danger to be apprehended from the description of persons mentioned in this bill. Are we to wait, then, said Mr. H., until a judicial process can be entered upon? To stay until the dagger is plunged into our bosoms before we take any means of defence?—Until the thief breaks into our house before we bar the door? He believed no one would say this would be good policy.

Suppose, said Mr. H., a person had good information that a set of thieves meant to break into his house on a certain night, what would be thought of the conduct of any individual who should say to him: "You need not prepare to defend yourself; there is no occasion to bar the doors—there are no thieves in the neighborhood?" Such a person certainly would be deemed a partner in the burglary. The allegory, Mr. H. said, was applicable to the fate of many nations whose governments have been overturned by France. Mr. H. referred to the animating picture of French intrigue given by the gentleman from Massachusetts. He trusted the bill would be passed. He wished no traitors should be left in the country to paralyze all our efforts for its defence and, when the enemy appeared, give him possession of it.

The zeal shown in this House, and in other places, against this bill evinces the deadly hatred of certain persons toward it. But it was well known that those European nations which have escaped being overcome by the domineering spirit of France owe their safety to a bill like this; and, unless we follow their example and crush the viper in our breast, we shall not, like them, escape the scourge which awaits us.

Mr. Dayton (the Speaker) most unequivocally reprobated the idea of Congress being confined to the strict letter of the Constitution in the nature, extent, and exercise of the authority vested in it. He said that a construction so narrow would be absurd, and would go to deprive the legislature of the power of making provisions upon the most common or most necessary cases merely because they were not specified. He adduced instances to prove that they might legislate with a view to "the general welfare," and, particularly, that, where a State, or part of a State, should be overwhelmed by the sea, or otherwise rendered uninhabitable from some extraordinary convulsion, a grant might be made to the people who were saved from the deluge either of money from the national treasury or of a part of the

vacant public lands. He cited many acts that had already been passed under that very general power of providing for the common defence and general welfare, and asserted that, though the Constitution was very useful in giving general directions, yet it was not capable of being administered under so rigorous and so mechanical a construction as had been sometimes contended for.

Mr. R. Williams said the gentleman last up is anxious to know whether the Federal Government has not the power to provide for the general welfare? Within the limits of the Constitution it certainly has the right; but it might require all power to do this; and then it would not, for if the general Government had all this power nothing would be left for the State governments to act upon. He wished gentlemen would mark the line of distinction and say whether the individual States do not possess some power to be employed for the general welfare as well as the general Government, and whether the benefits thence arising are not equally as serviceable to the public as when exercised by the general Government?

The gentleman from South Carolina supposes States may admit foreigners into their society, but may not be inclined to punish them for breaches of their laws. Could so absurd an opinion ever exist? Besides, if States choose to act contrary to each other in their internal policy, surely Congress has not the power to make them uniform. One State may punish a man with death for stealing a horse, and another may inflict upon him imprisonment. Yet this they have a right to do, without the interference of Congress.

In supporting this bill against aliens the gentleman from South Carolina has shown its operation upon citizens, which proves to him that the principle is intended to be carried further than it appears at present. If we look into the history of other countries we shall find that, whenever governments have wished to make inroads upon the liberties of the people, nothing has been more common than to institute an alarm of danger of some kind or other. No such maneuver, however, should ever induce him to grant an arbitrary power to the President of the United States, or to any other man. It is not sufficient to say that the general welfare requires a thing to be done; because, if it be a subject which belongs to the States, however necessary it may be to be done, Congress cannot do it.

Mr. Harper, after some observations showing the impropriety of treating persons confined for offences under this act as common felons, moved to strike out the words "and confined to

hard labor for and during life" and insert, in their place, "during the pleasure of the United States."

The question on the amendment was put and carried, there being 53 votes for it. The question of the passage of the bill now came forward.

Mr. Livingston, referring to the number of similar bills on the exclusion of aliens, said: This circumstance gave me a suspicion the principles of the measure were erroneous. Truth marches directly to its end by a single undeviating path. Error is either undetermined on its object or pursues it through a thousand winding ways; the multiplicity of propositions, therefore, to attain the same general but doubtful end led me to suspect that neither the object nor the means proposed to attain it were proper and necessary. These surmises were confirmed by a more minute examination of the act. In the construction of statutes it is a received rule to examine what was the state of things when they passed, and what were the evils they were intended to remedy; as these circumstances would be applied in the construction of the law it might be well to examine them minutely in framing it. The state of things, if we are to judge from the complexion of the bill, must be that a number of aliens, enjoying the protection of our Government, were plotting its destruction; that they are engaged in treasonable machinations against a people who have given them an asylum and support, and that there is no provision to provide for their expulsion and punishment. If these things are so, and no remedy exists for the evil, one ought speedily to be provided, but, even then, it must be a remedy that is consistent with the Constitution under which we act; for, as by that instrument all powers not expressly given by it to the Union are reserved to the States, it follows that, unless an express authority can be found vesting us with the power, be the evil ever so great, it can be remedied only by the several States who have never delegated the authority to Congress.

We must legislate upon facts, not on surmises; we must have evidence, not vague suspicions, if we meant to legislate with prudence. What facts have been produced? What evidence has been submitted to the House? I have heard, sir, of none. We have, indeed, been told that the fate of Venice, Switzerland, and Batavia was produced by the interference of foreigners. But the instances were unfortunate; because all those powers have been overcome by foreign force, or di-

vided by domestic faction, not by aliens who resided among them, and, if any instruction was to be gained from those republics, it would be that we ought to banish not aliens, but all those who did not approve of the Executive acts. This, he believed, gentlemen were not ready to avow; but, if this measure prevailed, he should not think the other remote; but, if it had been proved that these governments were destroyed by the conspiracies of aliens, it yet remains to show that we are in the same situation; or that any such plots have been detected, or are even reasonably suspected here. Nothing of this kind has been yet done. A modern Theseus, indeed, has told us he has procured a clue that will enable him to penetrate the labyrinth and destroy this monster of sedition. Who the fair Ariadne is, who so kindly gave him the ball, he has not revealed; nor, though several days have elapsed since he undertook the adventure, has he yet told us where the monster lurks. No evidence, then, being produced, we have a right to say that none exists, and yet we are about to sanction a most important act; and on what ground? Our individual suspicions, our private fears, our overheated imaginations. Seeing nothing to excite those suspicions, and not feeling those fears, I could not give my assent to the bill even if I did not feel a superior obligation to reject it on other grounds.

Our Government, sir, is founded on the establishment of those principles which constitute the difference between a free Constitution and a despotic power; a distribution of the legislative, executive, and judiciary powers into several hands; a distribution strongly marked in the three first and great divisions of the Constitution; by the first, all legislative power is given to Congress, the second vests all legislative functions in the President, and the third declares that the judiciary powers shall be exercised by the Supreme and Inferior Courts. Here, then, is a division of the governmental powers strongly marked, decisively pronounced, and every act of one or all of the branches that tends to confound these powers, or alter this arrangement, must be destructive of the Constitution. Examine, then, sir, the bill on your table and declare whether the first section does not confound these fundamental powers of government, vest them all in the more unqualified terms in one hand, and thus subvert the basis on which our liberties rest.

Legislative power prescribes the rule of action; the judiciary applies that general rule to particular cases, and it is the province of the Executive to see that the laws are carried into full effect. In all free governments these powers are exercised by

different men, and their union in the same hand is the peculiar characteristic of despotism. If the same power that makes the law can construct it to suit his interest and apply it to gratify his vengeance; if he can go further and execute, according to his own passions, the judgment which he himself has pronounced upon his own construction of laws which he alone has made, what other features are wanted to complete the picture of tyranny? Yet all this, and more, is proposed to be done by this act; by it the President alone is empowered to make the law, to fix in his mind what acts, what words, what thoughts or looks shall constitute the crime contemplated by the bill, that is, the crime of being "suspected to be dangerous to the peace and safety of the United States." He is not only authorized to make this law for his own conduct, but to vary it at pleasure, as every gust of passion, every cloud of suspicion shall agitate or darken his mind. The same power that formed the law, then, applies it to the guilty or innocent victim, whom his own suspicions, or the secret whisper of a spy, have designated as its object. The President, then, having made the law, the President having construed and applied it, the same President is, by the bill, authorized to execute his sentence, in case of disobedience, by imprisonment during his pleasure. This, then, comes completely within the definition of despotism—an union of legislative executive, and judicial powers. But this bill, sir, does not stop here; its provisions are a refinement upon despotism and present an image of the most fearful tyranny. Even in despotisms, though the monarch legislates, judges, and executes, yet he legislates openly; his laws, though oppressive, are known; they precede the offence and every man who chooses may avoid the penalties of disobedience. Yet he judges and executes by proxy, and his private interests or passions do not inflame the mind of his deputy.

But here the law is so closely concealed in the same mind that gave it birth—the crime is "exciting the suspicions of the President," but no man can tell what conduct will avoid that suspicion—a careless word, perhaps misrepresented, or never spoken, may be sufficient evidence; a look may destroy, an idle gesture may insure punishment; no innocence can protect, no circumspection can avoid the jealousy of suspicion; surrounded by spies, informers, and all that infamous herd which fatten under laws like this, the unfortunate stranger will never know either of the law, of the accusation, or of the judgment until the moment it is put in execution; he will detest your tyranny and fly from a land of desolators, inquisitions, and spies.

This, sir, is a refinement of the detestable contrivance of the Decemvirs; they hung the tables of their laws so high that few could read them. A tall man, however, might reach them, a short one might climb and learn their contents, but here the law is equally inaccessible to high and low. Safely concealed in the breast of its author, no industry or caution can penetrate this recess and obtain a knowledge of its provisions; nor, even if they could, as the rule is not permanent, would it at all avail.

Having shown that this act is at war with the fundamental principles of our Government, I might stop here in the certain hope of its rejection. But I can do no more; unless we are resolved to pervert the meaning of terms, I can show that the Constitution has endeavored to "make its surety doubly sure, and take a bond of fate," by several express prohibitions of measures like that you now contemplate. One of these is contained in the ninth section of the first article; it is at the head of the articles which restrict the powers of Congress, and declares "that the emigration or importation of such persons as any of the States shall think proper to admit, shall not be prohibited prior to the year 1808." Now, sir, where is the difference between a power to prevent the arrival of aliens and a power to send them away as soon as they shall arrive? To me they appear precisely the same. The Constitution expressly says that Congress shall not do this, and yet Congress are about to delegate this prohibited power and say that the President may exercise it as often as pleasure may direct.

I am informed that an answer has been attempted to this argument by saying that the article, though it speaks of "persons," only relates to slaves. But a conclusive reply to this answer may be drawn from the words of the section; it speaks of migration and importation. If it relates only to slaves "importation" would have been sufficient; but how can the other word apply to slaves? Migration is a voluntary change of a country; but who ever heard of a migration of slaves? The truth is both words have their appropriate meaning, and were intended to secure the interests of different quarters of the Union. The Middle States wished to secure themselves against any laws that might impede the emigration of settlers. The Southern States did not like to be prohibited in the importation of slaves; and so jealous were they of this provision that the fifth article was introduced to declare that the Constitution should not be amended so as to do it away.

But, even admit, said Mr. L., the absurdity that the word "migration" has no meaning, or one foreign to its usual accepta-

tion, and that the article relates only to slaves. Even this sacrifice of common sense will not help gentlemen out of their dilemma; slaves probably always, but certainly on their first importation, are aliens; many people think they are always "dangerous to the peace and safety of the United States!" If the President should be of this opinion, he not only can, but, by the terms of this law, is obliged to, order them off; for the act creates an obligation on him to send away all such aliens as he may judge dangerous to the peace or safety of the United States. Thus, according to the most favorable construction, every proprietor of this species of property holds at the will and pleasure of the President—and this, too, in defiance of the only article of the Constitution that is declared to be unalterable. But, let us, sir, for a moment imagine, if we can, that the States intended to restrict the general Government from preventing the arrival of persons whom they were yet willing to suffer that general Government to ship off as soon as they should arrive; grant all this and they will be as far from establishing the constitutionality of the bill as they were at the first moment it was proposed; for, in the third article, it is provided that all "judicial power shall be vested in the Supreme and Inferior Courts, that the trial of all crimes shall be by jury," except in case of impeachment; and, in the seventh and eighth amendments,[1] this provision is repeated and enforced by others which declare that "no man shall be held to answer for a capital or otherwise infamous crime, unless on a presentment of a grand jury"; that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witness in his favor, and to have the assistance of counsel for his defence." Now, sir, what minute article in these several provisions of the Constitution is there that is not violated by this bill? All the bulwarks which it opposed to encroachments fall before personal liberty, fall before this engine of oppression.

Judiciary power is taken from courts and given to the Executive, the previous safeguard of a presentment by a grand inquest is removed; the trial by jury is abolished; the "public trial" required by the Constitution is changed into a secret and worse than inquisitorial tribunal; instead of giving "informa-

[1] Now the fifth and sixth.

tion on the nature and cause of the accusation," the criminal, ignorant of his offence and the danger to which he is exposed, never hears of either until the judgment is passed and the sentence is executed; instead of being "confronted with his accusers" he is kept alike ignorant of their names and their existence; and even the forms of trial being dispensed with, it would be a mockery to talk of "proofs for witnesses," or the "assistance of counsel for defence"—thus are all the barriers which the wisdom and humanity of our country had placed between accused innocence and oppressive power at once forced and broken down. Not a vestige even of their form remains. No indictment; no jury; no trial; no public procedure; no statement of the accusation; no examination of the witnesses in its support; no counsel for defence; all is darkness, silence, mystery, and suspicion. But, as if this were not enough, the unfortunate victims of this law are told in the next section that if they can convince the President that his suspicions are unfounded he may, if he pleases, give them a license to stay; but, how remove his suspicions, when they know not on what act they were founded? Miserable mockery of justice! appoint an arbitrary judge armed with legislative and executive powers added to his own! let him condemn the unheard, the unaccused object of his suspicion; and, then, to cover the injustice of the scene, gravely tell him, you ought not to complain—you need only disprove facts that you have never heard—remove suspicions that have never been communicated to you; it will be easy to convince your judge, whom you shall not approach, that he is tyrannical and unjust; and, having done this, we give him the power he had before, to pardon you, if he pleases.

So obviously do the constitutional objections present themselves that their existence cannot be denied, and two wretched subterfuges are resorted to to remove them out of sight. First, it is said, the bill does not contemplate the punishment of any crime; and, therefore, the provisions in the Constitution relative to criminal proceedings and judiciary powers do not apply. But have the gentlemen who reason thus read the bill; or is everything forgotten in our zealous hurry to pass it? What are the offences upon which it is to operate? Not only the offence of being "suspected of being dangerous to the peace and safety of the United States," but also that of being "concerned in any treasonable or secret machinations against the Government thereof." And this, we are told, is no crime! a treasonable machination against the Government is not the subject of criminal jurisprudence! Good Heaven! to what absurdities does an

overzealous attachment to particular measures lead us! In order to punish a particular act we are forced to say that treason is no crime, and plotting against our Government is no offence! And, to support this fine hypothesis, we are obliged to plunge deeper in absurdity and say that, as the acts spoken of in the bill are no crimes, so the penalty contained in it is no punishment, it is only a prevention; that is to say, we invite strangers to come among us; we declare solemnly that Government shall not prevent them; we entice them over by the delusive prospect of advantage; in many parts of the Union we permit them to hold lands, and give them other advantages, while they are waiting for the period at which we have promised a full participation of all our rights. An unfortunate stranger, disgusted with tyranny at home, thinks he shall find freedom here; he accepts our conditions; he puts faith in our promises; he vests his whole property in our hands; he has dissolved his former connections, and made your country his own. But, while he is patiently waiting the expiration of the period that is to crown the work, and entitle him to all the rights of a citizen, the tale of a domestic spy, or the calumny of a secret enemy, draws on him the suspicions of the President, and, unheard, he is ordered to quit the spot which he selected for his retreat, the country which he had chosen for his own, perhaps the family which was his only consolation in life, he is ordered to retire to a country whose government, irritated by his renunciation of its authority, will receive only to punish him; and all this, we are told, is no punishment.

Again, we are told that the constitutional compact was made between citizens only, and that, therefore, its provisions were not intended to extend to aliens, and that this, acting only on them, is, therefore, not forbidden by the Constitution. But, unfortunately, neither common law, common justice, nor the practice of any civilized nation will permit this distinction. It is an acknowledged principle of the common law, the authority of which is established here, that alien friends (and permit me to observe that they are such only whom we contemplate in this bill, for we have another before us to send off alien enemies), residing among us, are entitled to the protection of our laws, and that during their residence they owe a temporary allegiance to our Government. If they are accused of violating this allegiance the same laws which interpose in the case of a citizen must determine the truth of the accusation, and if found guilty they are liable to the same punishment. This rule is consonant with the principles of common justice, for who would ever resort to another country if

he alone was marked out as the object of arbitrary power? It is equally unfortunate, too, for this argument that the Constitution expressly excludes any idea of this distinction; it speaks of all "judicial power," "all trials for crimes," all "criminal prosecutions," all "persons accused." No distinction between citizen and alien, between high or low, friends or opposers to the executive power, republican and royalist. All are entitled to the same equal distribution of justice, to the same humane provision to protect their innocence; all are liable to the same punishment that awaits their guilt. How comes it, too, if these constitutional provisions were intended for the safety of the citizen only, that our courts uniformly extend them all, and that we never hear it inquired whether the accused is a citizen, before we give him a public trial by jury?

I have seen measures carried in this House which I thought militated against the spirit of the Constitution; but never before have I been witness to so open, so wanton, and undisguised an attack. I have now done, sir, with the act, and come to consider the consequences of its operation.

One of the most serious has been anticipated, when I described the blow it would give to the Constitution of our country. We should cautiously beware of the first act of violation. Habituated to overleap its bounds, we become familiarized to the guilt, and disregard the danger of a second offence, until, proceeding from one authorized act to another, we at length throw off all restraint which our Constitution has imposed; and very soon not even the semblance of its form will remain.

But if, regardless of our duty as citizens, and our solemn obligation as representatives; regardless of the rights of our constituents; regardless of every sanction, human and divine; if we are ready to violate the Constitution we have sworn to defend—will the people submit to our unauthorized acts? Will the States sanction our usurped power? Sir, they ought not to submit; they would deserve the chains which these measures are forging for them, if they did not resist. For let no man vainly imagine that the evil is to stop here, that a few unprotected aliens only are to be affected by this inquisitorial power. The same arguments which enforce those provisions against aliens apply with equal strength to enacting them in the case of citizens. Unless we can believe that treasonable machinations, and the other offences described in the bill are not "crimes"; that an alien is not a "person"; and that one charged with treasonable practices is not "accused"; unless we can believe all this, in contradiction to our understanding, to received opinions, and the

uniform practice of our courts, we must allow that all these provisions extend equally to aliens and natives, and that the citizen has no other security for his personal safety than is extended to the stranger who is within his gates. If, therefore, this security is violated in one instance, what pledge have we that it will not in the other? The same plea of necessity will justify both. Either the offences described in the act are crimes, or they are not. If they are, then all the humane provisions of the Constitution forbid the mode of preventing them, or punishing their doers, equally as relates to aliens and citizens. If they are not crimes, then the citizen has no more safety by the Constitution than the alien has; for all those provisions apply only to *crimes*. So that, in either event, the citizen has the same reason to expect a similar law to the one now before you; which subjects his person to the uncontrolled despotism of a single man. You have already been told of plots and conspiracies; and all the frightful images that were necessary to keep up the present system of terror and alarm were presented to you. But who were implicated by these dark hints—these mysterious allusions? They were our own citizens, sir, not aliens. If there is then any necessity for the system now proposed it is more necessary to be enforced against our own citizens than against strangers; and I have no doubt, that either in this or some other shape this will be attempted. I now ask, sir, whether the people of America are prepared for this? Whether they are willing to part with all the means which the wisdom of their ancestors discovered, and their own caution so lately adopted, to secure their own persons? Whether they are ready to submit to imprisonment or exile whenever suspicion, calumny, or vengeance shall mark them for ruin? Are they base enough to be prepared for this? No, sir; they will, I repeat it, they will resist this tyrannic system; the people will oppose it—the States will not submit to its operation. They ought not to acquiesce, and I pray to God they never may.

My opinions, sir, on this subject are explicit, and I wish they may be known; they are that, whenever our laws manifestly infringe the Constitution under which they were made, the people ought not to hesitate which they should obey. If we exceed our powers we become tyrants, and our acts have no effect. Thus, sir, one of the first effects of measures such as this, if they be not acquiesced in, will be disaffection among the States, and opposition among the people to your Government—tumults, violations, and a recurrence to first revolutionary principles. If they are submitted to, consequences will be worse. After such manifest violation of the principles of our Constitution the form will not

long be sacred; presently, every vestige of it will be lost and swallowed up in the gulf of despotism. But, should the evil proceed no further than the execution of the present law, what a fearful picture will our country present! The system of *espionage* being thus established, the country will swarm with informers, spies, delators, and all that odious reptile tribe that breed in the sunshine of despotic power; that suck the blood of the unfortunate, and creep into the bosom of sleeping innocence, only to awake it with a burning wound. The hours of the most unsuspecting confidence, the intimacies of friendship, or the recesses of domestic retirement afford no security. The companion whom you must trust, the friend in whom you must confide, the domestic who waits in your chamber are all tempted to betray your imprudence or unguarded follies; to misrepresent your words; to convey them, distorted by calumny, to the secret tribunal where jealousy presides—where fear officiates as accuser, and suspicion is the only evidence that is heard.

These, bad as they are, are not the only ill consequences of these measures. Among them we may reckon the loss of wealth, of population, and of commerce. Gentlemen who support the bill seemed to be aware of this when, yesterday, they introduced a clause to secure the property of those who might be ordered to go off. They should have foreseen the consequences of the step they have been taking. It is now too late to discover that large sums are drawn from the banks, and that a great capital is taken from commerce. It is ridiculous, even, to observe the solicitude they show to retain the wealth of these dangerous men, whose persons they are so eager to get rid of. If they wish to retain it, it must be by giving them security to their persons, and assuring them that, while they respect the laws, the laws will protect them from arbitrary power. It must be, in short, by rejecting the bill on your table. I might mention many other inferior considerations; but I ought, sir, rather to entreat the pardon of the House for having touched on this topic, to which, compared with the breach of our Constitution, and the establishment of arbitrary power, every other topic is trifling. Arguments of convenience sink into nothing; the preservation of wealth, the interest of commerce, however weighty on other occasions, here lose their importance. When the fundamental principles of freedom are in danger we are tempted to borrow the impressive language of a foreign speaker, and exclaim, "Perish our commerce, let our Constitution live!" Perish our riches, let our freedom live!—this, sir, would be the sentiment of every American were the alternative between submission and

wealth. But here, sir, it is proposed to destroy our wealth in order to ruin our commerce—not in order to preserve our Constitution, but to break it—not to secure our freedom, but to abandon it.

I have now done, sir; but, before I sit down, let me entreat gentlemen seriously to reflect before they pronounce the decisive vote that gives the first open stab to the principles of our Government. Our mistaken zeal, like that of the patriarch of old, has bound one victim; it lies at the foot of the altar. A sacrifice of the first-born offspring of freedom is proposed by those who gave it birth. The hand is already raised to strike, and nothing, I fear, but the voice of Heaven can arrest the impious blow.

Let not gentlemen flatter themselves that the fervor of the moment can make the people insensible to these aggressions. It is an honest, noble warmth, produced by an indignant sense of injury. It will never, I trust, be extinct while there is a proper cause to excite. But the people of America, sir, though watchful against foreign aggression, are not careless of domestic encroachment; they are as jealous, sir, of their liberties at home as of the power and prosperity of their country abroad; they will awake to a sense of their danger. Do not let us flatter ourselves, then, that these measures will be unobserved or disregarded. Do not let us be told, sir, that we excite a fervor against foreign aggression only to establish tyranny at home; that, like the arch traitor, we cry "*Hail Columbia!*" at the moment we are betraying her to destruction; that we sing out "*Happy land!*" when we are plunging it in ruin or disgrace; and that we are absurd enough to call ourselves "*free and enlightened,*" while we advocate principles that would have disgraced the age of Gothic barbarity, and establish a code compared to which the ordeal is wise, and the trial by battle is merciful and just.

The question was put on the passage of the bill, and on the yeas and nays being taken there were 46 votes for it and 40 against it.

No prosecutions took place under the act.

CHAPTER III

The Sedition Law

The Senate Passes a Law against Seditious Utterances and Publications—It Is Debated in the House: in Favor, John Allen [Ky.], Robert G. Harper [S. C.], Harrison Gray Otis [Mass.], and Samuel W. Dana [Conn.]; Opposed, John Nicholas [Va.], Edward Livingston [N. Y.], Nathaniel Macon [N. C.], Joseph McDowell [N. C.], and Albert Gallatin [Pa.]—It Is Passed with Amendments—Professor Alexander Johnston on the Sedition Law.

ON June 26, 1798, the bill against seditious practices, which Mr. Harper in the preceding debate had intimated would be brought forward, was introduced in the Senate by Mr. Lloyd, of Maryland. It was passed on July 4 by a vote of 18 to 6, and on the 5th was introduced in the House. It provided that persons conspiring to oppose any measure of the Government, or to impede its operation, or to intimidate a Federal officer from exercising his trust, should be punished by fine and imprisonment. Any person who, by writing, speaking, or printing should threaten a Federal officer with damage to his character, or should incite, whether successfully or not, an insurrection or riot, was to be fined a sum not exceeding $5,000 and imprisoned for a term not less than six months nor exceeding five years. If his offence was traducing Congress, the President, or the Federal judiciary in particular by imputing motives hostile to the Constitution, he was to be fined a sum not exceeding $2,000 and be imprisoned for not more than two years. The bill was debated until July 10, when it was passed by a vote of 44 to 41.

The chief speakers in favor of the bill were: John Allen [Ky.], Robert G. Harper [S. C.], Harrison Gray Otis [Mass.], and Samuel W. Dana [Conn.]; its leading

opponents were: John Nicholas [Va.], Edward Livingston [N. Y.], Nathaniel Macon [N. C.], Joseph McDowell [N. C.], and Albert Gallatin [Pa.].

On the Sedition Act

House of Representatives, July 5–July 10, 1798

Mr. Livingston moved to reject the bill.

Mr. Allen.—I hope this bill will not be rejected. If ever there was a nation which required a law of this kind it is this. Let gentlemen look at certain papers printed in this city and elsewhere and ask themselves whether an unwarrantable and dangerous combination does not exist to overturn and ruin the Government by publishing the most shameless falsehoods against the Representatives of the people of all denominations, that they are hostile to free governments and genuine liberty, and of course to the welfare of this country; that they ought, therefore, to be displaced, and that the people ought to raise an *insurrection* against the Government.

I say, sir, a combination, a conspiracy against the Constitution, the Government, the peace and safety of this country, is formed, and is in full operation. It embraces members of all classes; the Representative of the people on this floor, the wild and visionary theorist in the bloody philosophy of the day, the learned and ignorant. Permit me to read a paragraph from *The Time-Piece,* a paper printed in New York:

> "When such a character attempts by antiquated and exploded sophistry, by Jesuitical arguments, to extinguish the sentiment of liberty, 'tis fit the mask should be torn off from this meaner species of aristocracy than history has condescended to record; where a person without patriotism, without philosophy, without a taste for the fine arts, building his pretensions on a gross and indigested compilation of statutes and precedents, is jostled into the Chief Magistracy by the ominous combination of old Tories with old opinions, and old Whigs with new, 'tis fit this mock monarch, with his court, composed of Tories and speculators, should pass in review before the good sense of the world. Monarchies are seen only with indignation and concern; at sight of these terrible establishments, fears accompany the execrations of mankind; but when the champion of the well-born, with his serene court, is seen soliciting and answering addresses, and pronouncing anathemas against France, it shall be my fault if other emotions be not excited; if to tears and execrations be not added derision and contempt."

Gentlemen contend for the liberty of opinions and of the press. Let me ask them whether they seriously think the liberty of the press authorizes such publications?

If this be not a conspiracy against Government and people, I know not what to understand from the "threat of tears, execrations, derision, and contempt." Because the Constitution guarantees the right of expressing our opinions, and the freedom of the press, am I at liberty falsely to call you a thief, a murderer, an atheist? Because I have the liberty of locomotion, of going where I please, have I a right to ride over the footman in the path? The freedom of the press and opinions was never understood to give the right of publishing falsehoods and slanders, nor of exciting sedition, insurrection, and slaughter, with impunity. A man was always answerable for the malicious publication of falsehood; and what more does this bill require?

In the *Aurora,* of last Tuesday, is this paragraph:

> "Where a law shall have been passed in violation of the Constitution, making it criminal to expose the crimes, the official vices or abuses, or the attempts of men in power to usurp a despotic authority, is there any alternative between an abandonment of the Constitution and resistance?"

The gentleman [Mr. Livingston] makes his proclamation of war on the Government in the House on Monday, and this infamous printer [Bache] follows it up with the tocsin of insurrection on Tuesday. He declares what is unconstitutional, and then invites the people to "resistance." This is an awful, horrible example of "the liberty of opinion and freedom of the press." Can gentlemen hear these things and lie quietly on their pillows? Are we to see all these acts practiced against the repose of our country, and remain passive? Are we bound hand and foot that we must be witnesses of these deadly thrusts at our liberty? Are we to be the unresisting spectators of these exertions to destroy all that we hold dear? Are these approaches to revolution and Jacobinic domination to be observed with the eye of meek submission? No, sir, they are indeed terrible; they are calculated to freeze the very blood in our veins. Such liberty of the press and of opinion is calculated to destroy all confidence between man and man; it leads to a dissolution of every bond of union; it cuts asunder every ligament that unites man to his family, man to his neighbor, man to society, and to Government. God deliver us from such liberty, the liberty of vomiting on the public floods of falsehood and hatred to everything sacred, human, and divine! If any gentleman doubts the effects of such a liberty let me direct his attention across the water; it has there made slaves of thirty millions of men.

At the commencement of the Revolution in France those loud and enthusiastic advocates for liberty and equality took special

care to occupy and command all the presses in the nation; they well knew the powerful influence to be obtained on the public mind by that engine; its operations are on the poor, the ignorant, the passionate, and the vicious; over all these classes of men the freedom of the press shed its baneful effects, and they all became the tools of faction and ambition, and the virtuous, the pacific, and the rich were their victims. The Jacobins of our country, too, sir, are determined to preserve in their hands the

CONGRESSIONAL PUGILISTS

"The Era of Bad Feelings" (1798)

From the collection of the New York Public Library

same weapon; it is our business to wrest it from them. Hence this motion so suddenly made, and so violently supported by the mover, to reject this bill without even suffering it to have a second reading; hence this alarm for the safety of "the freedom of speech and of the press."

I wish there were no other species of writings which aim at the overthrow of this Government, and calculated to excite the deeds of death. But, sir, members of this body are in the habit of writing to their constituents things which they cannot justify. The committee will pardon me for reading a part of one which appeared in the *Aurora* a few days ago. It is entitled,

"INTERESTING LETTER FROM A MEMBER OF CONGRESS FROM VIRGINIA TO HIS CONSTITUENTS."

After many comparisons of our Government with that of England, the learned writer says:

"Nor are we left altogether to conjectural events, arising out of a comparison of the general structure of the Government of England with that of the United States; there are special facts in our own affairs that evidently imply a tendency to similar abuses in the conduct of our government.

"The public debt has been studiously augmented and funded, according to the mystery and intricacy of English finances; we have been annually familiarized to the system of loans and funds; and we have a bank connected with government in its being and in its transactions. The nature of these institutions, and their political effects, already discernible in this country, and brought to full form and maturity in England, plainly prove their great fitness and agency in producing a dangerous preponderance of executive power; the Executive is regularly supported by a party in both Houses of Congress on every questionable case respecting its powers or its projects for expense," &c.

A Representative of the people has committed to him a trust of the highest nature; his obligations are of the most solemn kind; an awful responsibility rests upon him to deal with his constituents in the sincerity of his heart. How could a member of this House seriously inform his constituents that "the public debt has been studiously augmented"? He knew the reverse to be true; how he could say anything else this letter contains I cannot imagine. His object must be to inflame his constituents against the Government, though at the expense of all truth.

If these things are true; if we have so betrayed the interests of our constituents; if we are so seeking to bring a despotism on this country, we ought to be hurled from our seats, and give place to better men; we ought to be hurled to that punishment which would most justly await us. No gentleman believes them, however; no gentleman believes that every sense of moral obligation is set at naught in this House, and that we forget all that we owe to our constituents. Such representations are outrages on the national authority, which ought not to be suffered; and I have no doubt that Congress have power to remedy the evil. If it be determined that we have not this power the people will certainly vest it in the Congress, for no government can exist without it; it is inherent in every government, because it is necessary to its preservation.

MR. HARPER said that he had often heard in this place, and elsewhere, harangues on the liberty of the press, as if it were to swallow up all other liberties; as if all law and reason, and every

right, human and divine, were to fall prostrate before the liberty of the press; whereas, the true meaning of it is no more than that a man shall be at liberty to print what he pleases, provided he does not offend against the laws, and not that no law shall be passed to regulate this liberty of the press.

The rational liberty of the press will not be restricted by a well-defined law, provided persons have a fair trial by jury; but that liberty of the press which those who desire, who wish to overturn society, and trample upon everything not their own, ought not to be allowed, either in speaking or writing, in any country.

While this abuse was confined to certain newspapers in the United States, it excited in him no alarm; but, when he heard a gentleman on the floor of this House, whose character and connections gave him weight with the people, pronouncing an invective against the Government, and calling upon the people to rise against the law, the business put on a very serious appearance; he thought so, not because he should wish to have that gentleman muzzled (for he knew he had the liberty of uttering as much treason as he pleased, and that, if his own sense of propriety and decorum was not sufficient to check him, there was no other check upon him), but because this speech may have a very different effect from the filthy streams of certain newspapers; it may gain a credit with the community, and produce consequences which all former abuse has failed to do. It is time, therefore, for the Government to take alarm; the long forbearance which it has shown ought to come to an end, since all its acts are represented in the vilest and foulest colors; and now they are sanctioned by the assertions of a person high in respectability (he meant as to his situation in life), and a law ought to pass to prevent such invitations as had been given to the people from producing their intended effects. It was for this reason that he wished a law to pass to punish treasonable and seditious writings.

Mr. Nicholas said: If the declarations of the gentlemen from Connecticut and South Carolina were attended to it would be found they are most afraid of the speeches and letters of gentlemen in this House. They acknowledge, however, they cannot prevent members from speaking what they please here. What, then, is their aim? Do they mean to prevent the publication of their sentiments to their constituents and to the world? If this was not their intention he could not tell what it was?

There was one general view of this subject, which Mr. N. took to be the most momentous that this country ever saw. He

was ready to go with gentlemen into measures for affording a liberal support to the war, which it appears must be gone into; but he was not ready to create a *domestic tyranny.* The people of this country are competent judges of their own interests, and he was desirous that the press should remain perfectly free to give them every information relative to them; and to restrict it would be to create a suspicion that there is something in our measures which ought to be kept from the light. It was striking at the root of free republican government to restrict the use of speaking and writing.

Mr. Livingston said, after receiving the chastisement of the gentleman from Connecticut on one cheek, he, like a good Christian, had turned the other to the gentleman from South Carolina, and received the stripes of both. He expressed his acknowledgments to these gentlemen, however, if not for their chastisement, for the insight which they have given the House into this bill. They have said its design is not only to restrict the liberty of the press, which is secured by the Constitution, but the liberty of speech on this floor. The gentleman from South Carolina did not say explicitly that he wished this; but he said he was regardless of what was said in the public papers, either of private or personal slander, or of a slander on the Government, until he heard a certain speech delivered in this House; and, though he said he did not intend to restrict the liberty of speech in this House, he must have had something of the kind in view. [Mr. Harper said it was not his intention to restrict the freedom of speech on that floor, but the consequences of it out of doors.] Then, said Mr. L., he will either restrict the members from speaking, or, in some way, prevent the people from knowing what has been said. How is this to be done? By shackling newspapers, and preventing that free communication of sentiment which has heretofore been expressed on public topics.

Mr. L. avowed with pride the sentiments which he had uttered in the House, and to which gentlemen objected. He could not see how acts made contrary to the Constitution could be binding upon the people; unless gentlemen say Congress may act in contravention to the Constitution. [Mr. Otis asked who were to be the judges?] Mr. L. answered, the people of the United States. We, said he, are their servants; when we exceed our powers, we become their *tyrants!*

This is one object of complaint; the other is against newspaper publications. The gentleman from South Carolina has said that, provided the law be clear and well defined, and the trial by jury be preserved, he knew of no law which could in-

fringe the liberty of the press. If this be true, Congress might restrict all printing at once. We have, said he, nothing to do but to make the law precise, and then we may forbid a newspaper to be printed, and make it death for any man to attempt it!

If this be the extent to which this bill goes it is not only an abridgment of the liberty of the press, which the Constitution has said shall not be abridged; but it is a total annihilation of the press. Were he then to withdraw his motion he should consider himself guilty of treason; by his consent so unconstitutional a measure should not progress an inch. However unsuccessful he might be, he would oppose it in every stage.

Mr. Otis believed there was nothing in the bill contrary to the common law of the several States of the Union.

Mr. Macon had no doubt on his mind that this bill was in direct opposition to the Constitution; and that if a law like this was passed, to abridge the liberty of the press, Congress would have the same right to pass a law making an establishment of religion, or to prohibit its free exercise, as all are contained in the same clause of the Constitution; and, if it be violated in one respect, it may as well be violated in others. Several laws had been passed which he thought violated the spirit, but none before this which directly violated the letter of the Constitution; and, if this bill was passed, he should hardly think it worth while in future to allege against any measure that it is in direct contradiction to the Constitution.

Laws of restraint, like this, Mr. M. said, always operate in a contrary direction from that which they were intended to take. The people suspect something is not right when free discussion is feared by government. They know that truth is not afraid of investigation.

If, said Mr. M., the people are so dissatisfied with government as some gentlemen would have it believed, but which he did not credit, by passing a law like the present you will force them to combine together; they will establish corresponding societies throughout the Union, and communications will be made in secret, instead of publicly, as had been the case in other countries. He believed the people might be as safely trusted with free discussion as they whom they have chosen to do their business.

The gentleman from Massachusetts [Mr. Otis] has said this bill is conformable to the common law. He knew persons might be prosecuted for a libel under the State governments; but if

this power exist in full force at present, what necessity can there be for this bill?

Much had been said about a certain paper printed in this city. He believed if anything appeared which was unfounded in that paper it would always be contradicted in another. It is well known there are papers on both sides of the question, and if you say you have read one you are generally asked if you have seen the other?

Mr. McDowell was in hopes that, when the third article[1] of the amendments to the Constitution had been read, the unconstitutionality of this bill would have been so evident that it would have been rejected without debate.

Mr. Gallatin said: The manner in which the principle of the bill had been supported was perhaps more extraordinary still than the bill itself. The gentleman from Connecticut [Mr. Allen], in order to prove the existence of a combination against the Constitution and Government, had communicated to the House—what? a number of newspaper paragraphs; and even most of those were such as would not be punishable by the bill as it now stands. The object of that gentleman in wishing a bill of this nature to pass extended far beyond the intention of the Senate who had sent down this bill; far beyond, he would venture to say, the idea of any other member upon this floor, besides himself. His idea was to punish men for stating facts which he happened to disbelieve, or for enacting and avowing opinions, not criminal, but perhaps erroneous.

The gentleman from Connecticut had also quoted an extract of a letter said to be written by a member of Congress from Virginia, and published in last Saturday's *Aurora*. The style and composition of that letter did the highest honor to its writer. It contained more information and more sense, and gave more proofs of a sound understanding and strong mind, than ever the gentleman from Connecticut had displayed, or could display, on this floor. He was altogether at a loss to know what was criminal in it, though he might easily see why it was obnoxious. Was it erroneous or criminal to say that debts and taxes were the ruinous consequences of war? Or that some members in both Houses of Congress uniformly voted in favor of an extension of the powers of the Executive, and of every proposed expenditure of money? Was it not true? Gentlemen of that description avow that, in their opinion, the executive is the weakest branch of government; and they act upon the ostensible principle that, on that account, its influence and powers must be increased.

[1] Now the first.

Look at the laws passed during this session. Look at the alien bill, at the provisional army bill, look at the prodigious influence acquired by so many new offices, and then deny that the powers of the Executive have not been greatly increased. As to the increased rate of expenditure, and the propensity of these gentlemen to vote money, they would not themselves deny it. Was it criminal to say that the Executive is supported by a party, when gentlemen declared that it must be supported by a party? When the doctrine had been avowed on this floor that men of a certain political opinion alone ought to be appointed to offices; and when the Executive had now adopted and carried into practice that doctrine in its fullest extent?

Was the gentleman afraid, or, rather, was Administration afraid, that error could not be successfully opposed by truth? The American Government had heretofore subsisted, it had acquired strength, it had grown on the affection of the people, it had been fully supported without the assistance of laws similar to the bill now on the table. It had been able to repel opposition by the single weapon of argument. And at present, when out of ten presses in the country nine were employed on the side of Administration, such is their want of confidence in the purity of their own views and motives that they even fear the unequal contest, and require the help of force in order to suppress the limited circulation of the opinions of those who did not approve all their measures. One of the paragraphs says that it will soon become a question whether there will be more liberty at Philadelphia or Constantinople. The gentleman from Connecticut bitterly complains of this, as insinuating that some persons in Government intend to establish a despotic power; and in order to convince the writer of his error that gentleman not only supports the bill, but avows principles perfectly calculated to justify the assertions contained in the paragraph.

This bill and its supporters suppose, in fact, that whoever dislikes the measures of Administration and of a temporary majority in Congress, and shall, either by speaking or writing, express his disapprobation and his want of confidence in the men now in power, is seditious, is an enemy, not of Administration, but of the Constitution, and is liable to punishment. That principle, Mr. G. said, was subversive of the principles of the Constitution itself. If you put the press under any restraint in respect to the measures of members of Government; if you thus deprive the people of the means of obtaining information of their conduct, you in fact render their right of electing nugatory; and this bill must be considered only as a weapon used by

a party now in power, in order to perpetuate their authority and preserve their present places.

The gentleman from South Carolina [Mr. Harper] had stated that he did not apprehend any serious mischief from the present licentiousness of the press until he had heard the speech of a member from New York [Mr. Livingston] inviting the people to resist a law of Congress. That gentleman had forgotten that the bill which he now meant to support could suppress and punish only that licentiousness of which he declared he was not afraid, and could not reach speeches of members of Congress, which, by the Constitution, could not be noticed out of these walls. This was the first attack made upon a speech delivered in this House, but what, from the gentleman from South Carolina, he had for some time expected; for, in his career, after having grossly attacked members first for writing circular letters, and then on account of their private correspondence, the next step must be to make their speeches the foundation of a sedition law. As to the speech itself, so far as he had heard the expressions alluded to, it was not an invitation to the people, or an opinion that the people should oppose the alien bill itself as unconstitutional; but merely a general position that they had a right to resist, and would resist unconstitutional and oppressive laws. He believed that doctrine to be strictly correct, and neither seditious nor treasonable. The opposite doctrines of passive obedience and non-resistance had long been exploded. America had never received them. America had asserted the right of resisting unconstitutional laws, and the day we were celebrating yesterday (4th of July) is a monument of that right. It is a right to which the people of America may, perhaps, in the course of events be again obliged to resort. God forbid that we should ever see that day! But it is above all in the power of Government to avert such an evil by refraining from unconstitutional and arbitrary laws.

Mr. Dana said: The bill has been condemned as violating one of the articles adopted as amendments to the Constitution. Could the framers of the Constitution intend to guarantee, as a sacred principle, the liberty of lying against the Government? What do gentlemen understand by "the freedom of speech and of the press"? Is it a license to injure others or the Government, by calumnies, with impunity?

Let it be remembered that the uttering of malicious falsehoods, to the injury of the Government, is the offence which it is now intended to restrain; for, if what is uttered can be proved true, it will not, according to this bill, be punished as libelous.

What, then, is the rational, the honest, the constitutional idea of freedom of language or of conduct? Can it be anything more than the right of uttering and doing what is not injurious to others? This limitation of doing no injury to the rights of others undoubtedly belongs to the true character of real liberty. Indeed can it, in the nature of things, be one of the rights of freemen to do injury? For himself, Mr. D. wanted not the liberty of calumny or of conspiracy, and was in favor of the principle of the bill.

The question on rejecting the bill was taken by yeas and nays—yeas 36, nays 47.

Mr. Harper then offered an amendment to the bill, which was intended to obviate the objections against it upon the score of indefiniteness of mode of determining the crimes and trying the accused. The amendment provided that trial under the act should take place in the Federal courts in the State in which it was charged that the crime had been committed, and be conducted under the common law of libel and before juries formed according to the practice of the State.

This amendment was adopted by the casting vote of the Speaker (Jonathan Dayton, of New Jersey), the vote having been 40 to 40. The debate was then continued with special bearing on the new issue injected by the amendment, namely, the enlargement of the powers of the Federal judiciary by recognition of its common law jurisdiction in criminal matters, in which matters the Republicans claimed that the State courts had sole authority save in the cases of crimes expressly enumerated in the Constitution: treason, counterfeiting Federal coin or securities, and piracy and other offences against international law.

Mr. Nicholas said: It has been the object of all regulations with respect to the press to destroy the only means by which the people can examine and become acquainted with the conduct of persons employed in their Government. If this bill be passed into a law the people will be deprived of that information on public measures which they have a right to receive, and which is the life and support of a free government; for, if printers are to be subject to prosecution for every paragraph which appears in their papers, that the eye of a jealous government can torture

into an offence against this law, and to the heavy penalties here provided, it cannot be expected that they will exercise that freedom and spirit which it is desirable should actuate them; especially when they would have to be tried by judges appointed by the President, and by juries selected by the marshal, who also receives his appointment from the President, all whose feelings would, of course, be inclined to commit the offender if possible. Under such circumstances it must be seen that the printers of papers would be deterred from printing anything which should be in the least offensive to a power which might so greatly harass them. They would not only refrain from publishing anything of the least questionable nature, but they would be afraid of publishing the truth, as, though true, it might not always be in their power to establish the truth to the satisfaction of a court of justice. This bill would, therefore, go to the suppression of every printing press in the country which is not obsequious to the will of Government.

Mr. N. again asked, what are the bounds which gentlemen would draw between the liberty and licentiousness of the press? The Senate had sent them the project of one law which made it criminal to attribute bad motives to Government, even where the facts were not questionable; the House had now another project, which describes a number of other offences, all restricting the use of the press. The Constitution has not defined the bounds here spoken of. He had heard something said out of doors on the subject of common law; that the offences created by this bill are offences under it; but two gentlemen who advocate the bill had denied that the common law made any offences against the United States.

Mr. Harper said, if any expression of his was alluded to, he never said that no common law offence could be committed against the United States. He had said that there was no common-law jurisdiction in the courts of the United States; but he believed the common-law doctrine of libels as applicable to the Government of the United States as any other government.

Mr. Nicholas hoped there was no necessity for examining the opinions of the gentleman from South Carolina as to the common law being part of the law of the United States. He should like to know how the United States had adopted the common law. He should be glad to know where gentlemen found an account of their having so adopted it. Do gentlemen suppose that, in adopting the Constitution, the United States adopted the common law of all the States, which is so various, that he would venture to say no man perfectly knew it at the time, nor did he

believe that any one gentleman who seems in this House to entertain that opinion is acquainted with the common law of all the States. The common law of England has undergone various improvements and modifications in the several States, which it could not be supposed would be rejected by the convention who formed the Constitution in silence. Indeed, it was to him one of the most absurd ideas imaginable. If the common law was not adopted by the Constitution, and does not form a part of it, where is the rule by which to ascertain where the liberty of the press ends and its licentiousness begins? If gentlemen say it is adopted by the Constitution, it must remain unchangeable, and there could be no authority for passing this law.

And yet, in direct opposition to the clause of the Constitution which says "Congress shall pass no law to abridge the freedom of the press," Congress is now about to pass such a law. For it is vain to talk about the licentiousness of the press, the prohibition is express, "shall pass no law to abridge," etc.

Mr. N. said he was as sensible as any other gentleman that some of our printers had abused the liberty of the press, but, notwithstanding he saw this, he was far from being convinced of either the propriety or necessity of legislative interference in the matter. Falsehoods issued from a press are not calculated to do any lasting mischief. Falsehoods will always depreciate the press from whence they proceed. He was persuaded that the publication of one falsehood in a paper would do it more mischief than the abuse of its enemies. Every publisher of a newspaper who consults his own interest and respectability will, as far as he is able to do it, make it a vehicle of correct information.

Mr. N. wished gentlemen, before they gave a final vote on this bill, to consider its effects; and, if they did this, he thought they would consent to stop here. He desired them to reflect on the nature of our Government; that all its officers are elective, and that the people have no other means of examining their conduct but by means of the press, and an unrestrained investigation through it of the conduct of the Government. Indeed, the heart and life of a free Government is a free press; take away this, and you take away its main support.

If members of the legislature are charged falsely they are in as good situations as they could wish to be to refute the charge; and it is better, according to their understanding of the matter (and he owned he concurred with them in opinion), that fifty slanderers should escape punishment than that a single oppression, with respect to the liberty of the press, should take place. More mischief would be done to the press by a single act of this

kind than any possible amount of slander could do harm. Mr. N. concluded by saying that, it having been seen that, in England, when in the greatest possible state of alarm, there was no disposition to protect their representative characters against examination in the public prints, he trusted the Representatives of this free country would not consent to pass laws by which the free public examination of their own conduct will be prohibited.

Mr. Otis said: The people of the individual States brought with them as a birthright into this country the common law of England, upon which all of them have founded their statute law. If it were not for this common law many crimes which are committed in the United States would go unpunished. No State has enacted statutes for the punishment of all crimes which may be committed; yet in every State he presumed there was a superior court which claimed cognizance of all offences against good morals, and which restrained misdemeanors and opposition to the constituted authorities, under the sanction merely of the common law. When the people of the United States convened for the purpose of framing a Federal compact they were all habituated to this common law, to its usages, its maxims, and its definitions. It had been more or less explicitly recognized in the constitution of every State, and in that of Maryland it was declared to be the law of the land. If, then, we find in an instrument digested by men who were all familiarized to the common law not only that the distribution of power, and the great objects to be provided for, are congenial to that law, but that the terms and definitions by which those powers are described have an evident allusion to it, and must otherwise be quite inexplicable, or at best of a very uncertain meaning, it will be natural to conclude that, in forming the Constitution, they kept in view the model of the common law, and that a safe recourse may be had to it in all cases that would otherwise be doubtful. Thus we shall find that one great end of this compact, as appears in the preamble, is the establishment of justice, and for this purpose a judicial department is erected, whose powers are declared "to extend to all cases in law and equity, arising under the Constitution, the laws of the United States," etc. Justice, if the common-law ideas of it are rejected, is susceptible of various constructions, but agreeably to the principles of that law it affords redress for every injury, and provides a punishment for every crime that threatens to disturb the lawful operations of Government. Again, what is intended by "cases at law and equity arising under the Constitution," as distinguished from cases "arising under the laws of the United States"? What

other law can be contemplated but common law; what sort of equity but that legal discretion which has been exercised in England from time immemorial, and is to be learned from the books and reports of that country? If it be answered that these words comprise civil controversies only, though no reason appears for this distinction, yet what is to be done with other terms, with trial, jury, impeachment, etc., for an explanation of all which the common law alone can furnish a standard? It has been said by the gentleman that the Constitution has specified the only crimes that are cognizable under it; but other crimes had been made penal at an early period of the government, by express statute, to which no exception had been taken. For example, stealing public records, perjury, obstructing the officers of justice, bribery in a judge, and even a contract to give a bribe (which last was a restraint upon the liberty of writing and speaking) were all punishable, and why? Not because they are described in the Constitution, but because they are crimes against the United States—because laws against them are necessary to carry other laws into effect; because they tend to subvert the Constitution. The same reasons applied to the offences mentioned in the bill.

Mr. Otis contended that this construction of the Constitution was abundantly supported by the act for establishing the judicial courts. That act, in describing certain powers of the district court, contains this remarkable expression: "saving to suitors in all cases the right of a common-law remedy, where the common law was competent to give it." He could not tell whence this competency was derived, unless from the Constitution; nor did he perceive how this competency applied to civil and not to criminal cases.

It was, therefore, most evident to his mind that the Constitution of the United States, prior to the amendments that have been added to it, secured to the National Government the cognizance of all the crimes enumerated in the bill, and it only remained to be considered whether those amendments divested it of this power. The amendment quoted by the gentleman from Virginia is in these words: "Congress shall make no law abridging the freedom of speech and of the press." The terms "freedom of speech and of the press," he supposed, were a phraseology perfectly familiar in the jurisprudence of every State, and of a certain and technical meaning. It was a mode of expression which we had borrowed from the only country in which it had been tolerated, and he pledged himself to prove that the construction which he should give to those terms should be con-

sonant not only to the laws of that country, but to the laws and judicial decisions of many of the States composing the Union. This freedom, said Mr. O., is nothing more than the liberty of writing, publishing, and speaking one's thoughts, under the condition of being answerable to the injured party, whether it be the Government or an individual, for false, malicious, and seditious expressions, whether spoken or written; and the liberty of the press is merely an exemption from all previous restraints. In support of this doctrine, he quoted Blackstone's "Commentaries," under the head of libels, and read an extract to prove that in England, formerly, the press was subject to a licenser; and that this restraint was afterward removed, by which means the freedom of the press was established. He would not, however, dwell upon the law of England, the authority of which it might suit the convenience of gentlemen to question; but he would demonstrate that, although in several of the State constitutions the liberty of speech and of the press were guarded by the most express and unequivocal language, the legislatures and judicial departments of those States had adopted the definitions of the English law, and provided for the punishment of defamatory and seditious libels. [Mr. Otis here cited laws made by a number of the States.]

In all these instances it is clearly understood that to punish licentiousness and sedition is not a restraint or abridgment of the freedom of speech or of the press.

The gentleman from Virginia had inquired how a line could be drawn between the liberty and licentiousness of the press? He would inform him that an honest jury was competent to such a discrimination, they could decide upon the falsehood and malice of the intention. How, said he, do they draw a line of discrimination in the case of a forgery of public security? This crime is effected through the medium of the press or of the pen. How can they punish the intent when a man offers a bribe to a judge, which may be done by words only? These are offences which the gentlemen would anxiously discountenance. Yet forgery is only the liberty of the press upon his construction, and an offer of bribery is merely freedom of speech. Is it not a restraint upon the freedom of speech that the people in the gallery are not allowed to join in this debate? Yet this would hardly be permitted. Why, then, said Mr. O., are gentlemen so feelingly alive on this subject? Where lies the injury in attempting to check the progress of calumny and falsehood? Or how is society aided by the gross and monstrous outrages upon truth and honor and public character and private peace which inundate the coun-

try? Can there be any necessity of allowing anonymous and irresponsible accusers to drag before the tribunal of public opinion magistrates, and men in office, upon false and groundless charges? There are sixteen legislatures in the United States, in which all the measures of Government are open to investigation. There are two Houses of Congress, in which every accusation and suspicion may have free vent, wherein our jealousies and prejudices may be uttered without restraint, and every man will still be at liberty to print and speak at pleasure; but he must be prepared to prove those charges which bring disgrace upon his fellow-citizens. No reasonable being can desire a greater latitude than this. But the gentleman from Virginia is fearful that an impartial jury will not be found in the present excited state of the public opinion; but if twelve honest men cannot be found to acquit a libellist he ought to be convicted. He urges further that, even in Great Britain, Parliament has never made laws to restrain censorious remarks upon its measures; but, in Great Britain, libels as well against Parliament as other bodies of men are offences at common law. Neither does the present bill restrain a free animadversion upon the proceedings of Congress or the conduct of its members; it merely prohibits calumny and deception.

Mr. Macon proceeded to quote the opinions of the leading members in several of the State conventions, in order to show, from the opinions of the friends of the Constitution, that it was never understood that prosecutions for libels could take place under the general Government; but that they must be carried on in the State courts, as the Constitution gave no power to Congress to pass laws on this subject. Not a single member in any of the conventions gave an opinion to the contrary.

Mr. M. also quoted the opinions of members of Congress at the time the amendments to the Constitution were adopted, to prove the same thing, and inquired how it was come to pass, notwithstanding all the positive opinions which he had quoted to the contrary, that Congress should now conceive that they have power to pass laws on this subject? He could himself find no ground to justify the change.

Gentlemen, Mr. M. said, might call this a harmless bill; but however harmless it may be it is a beginning to act upon forbidden ground, and no one can say to what extent it may hereafter be carried. He thought this subject of the liberty of the press was sacred, and ought to be left where the Constitution had left it. The States have complete power on the subject, and when Congress legislates it ought to have confidence in the States, as

the States ought also to have confidence in Congress, or our Government is gone. This Government depends upon the State legislatures for existence. They have only to refuse to elect Senators to Congress, and all is gone. He believed there was nowhere any complaint of a want of proper laws under the State governments; and though there may not be remedies found for every grievance in the general Government, what it wants of power will be found in the State governments, and there can be no doubt but that power will be duly exercised when necessity calls for it.

Mr. Livingston said that, notwithstanding that kind of accommodating principle which has been set up and reiterated, that the powers of this Constitution extend to every possible case —a principle which goes to the destruction of State authorities, and makes that instrument mean anything or nothing—he should again venture to engage the attention of the House while he endeavored to show that this bill is not only contrary to the spirit, but to the direct letter of the Constitution.

The Constitution declares that "no law shall be passed to abridge the liberty of speech or of the press." Let us inquire, said Mr. L., what was the liberty enjoyed at the time this declaration was agreed to, and see whether citizens will enjoy the same liberty after this law passes that they then enjoyed. Will gentlemen say that the same liberty of writing and speaking did not exist then that now exists? If they will not say this, must they not allow that the Constitution is positive in prohibiting any change in this respect? Gentlemen may call this liberty an evil, if they please; if it be an evil (which he was far from believing) it is an evil perpetrated by the Constitution.

The Constitution seems to have contemplated cases which might arise at a future day. It seems to have foreseen that majorities (far be it from him to believe the present majority is of the number) might be actuated by dispositions hostile to the Government; that it might wish to pass laws to suppress the only means by which its corrupt views might be made known to the people, and therefore says, *no* law shall be passed to abridge the liberty of speech and of the press. This privilege is connected with another dear and valuable privilege—the liberty of conscience. What is liberty of conscience? Gentlemen may tomorrow establish a national religion agreeably to the opinion of a majority of this House, on the ground of an uniformity of worship being more consistent with public happiness than a diversity of worship. The doing of this is not less forbidden than the act which the House are about to do. But, it is said,

will you suffer a printer to abuse his fellow-citizens with impunity, ascribing his conduct to the very worst of motives? Is no punishment to be inflicted on such a person? Yes. There is a remedy for offences of this kind in the laws of every State in the Union. Every man's character is protected by law, and every man who shall publish a libel on any part of the Government is liable to punishment. Not, said Mr. L., by laws which we ourselves have made, but by laws passed by the several States. And is not this most proper? Suppose a libel were written against the President, where is it most probable that such an offence would receive an impartial trial? In a court, the judges of which are appointed by the President, by a jury selected by an officer holding his office at the will of the President, or in a court independent of any influence whatever? The States are as much interested in the preservation of the general Government as we are. We do wrong when we attempt to set up interests independent of the States. They are all desirous of preserving the Constitution as it now stands; and it is, therefore, much more probable that justice will be found in a court in which neither of the parties have influence than in one which is wholly in the power of the President.

But it is said this Government is liable to suffer abuse of the worst kind; the worst motives may be attributed to it, the most false statements made with respect to its conduct, and no hand can be held out to protect it. For his own part, he believed there ought to be no such power. He believed every independent government was equal to the protection of its private or public character; but when gentlemen speak of slanders against the Government, he knew of no such thing. We are charged, for instance, with passing an unconstitutional act—with violating our oaths. What answer is it proposed we should make to the charge? We are not to disprove the fact, and let the public judge between us, but we are immediately to prosecute the man who makes the charge. You may, by thus acting, establish error as soon as truth; you put them both on the same footing; you crush them by force of arms, and not by the force of reason. This is the same system which heretofore lighted the fires of Smithfield, and which has produced so much bloodshed and ruin among mankind.

But even the constitutional objection to this bill, great as it is, is of small importance, when it is considered in another point of view. He looked upon it as a link in a chain of events leading to the most serious consequences—events which he had always opposed and constantly deplored—leading to a practical

change in our Government. Gentlemen may think this is not so. He had frequently heard them speak of weak and rotten parts of the system; they may wish only to strengthen the weak parts, and cut out the rotten. But, Mr. L. said, he admired the Constitution in its present form; he had superadded to this admiration the sanction of an oath. Both inclination and duty, therefore, led him to oppose measures which, in his opinion, went to a radical change of it.

Many writers have amused themselves, and instructed the world, by delineating the means by which free governments gradually become oppressive; and some of them the means by which free governments become despotisms. He would take the liberty of reading an extract out of one of the best writings he had seen on this subject—the best in this view: as it shows how a government, organized like ours, may come to destruction. He would barely read the passage, and, if it did not make an impression on the minds of gentlemen, he should despair of saying anything that would. [Mr. Dana inquired the name of the author.] Mr. Livingston replied the book he alluded to was John Adams's "Defence of the American Constitution." While he read this, he wished it to be recollected that it had been declared on this floor that none but men of a certain political opinion would be chosen by the President to office. Mr. L. then read as follows:

"A few eminent, conspicuous characters will be continued in their seats in the Sovereign Assembly, from one election to another, whatever changes are made in the seats around them. By superior art, address, and opulence; by more splendid birth, reputation, and connections, they will be able to intrigue with the people, and their leaders out of doors, until they worm out most of their opposers and introduce their friends. To this end, they will bestow all offices, contracts, privileges in commerce, and other emoluments, on the latter, and their connections, and throw every vexation and disappointment in the way of the former, until they establish such a system of hopes and fears throughout the State as shall enable them to carry a majority in every fresh election of the House. The judges will be appointed by them and their party, and, of consequence, will be obsequious enough to their inclinations. The whole judicial authority, as well as the executive, will be employed, perverted, and prostituted to the purposes of electioneering. No justice will be attainable, nor will innocence or virtue be safe in the judiciary courts, but for the friends of the prevailing leaders. Legal prosecutions will be instituted and carried on against opposers, to their vexation and ruin; and, as they have the public purse at command, as well as the executive and judicial power, the public money will be expended in the same way. No favors will be attainable but by those who will court the ruling demagogues in the House by voting for their friends and instruments; and pensions and pecuniary rewards and gratifications, as well as honor and offices of every kind, will be voted to friends and par-

tisans. The leading minds and most influential characters among the clergy will be courted, and the views of the youth in this department will be turned upon those men, and the road to promotion and employment in the church will be obstructed against such as will not worship the general idol. Capital characters among the physicians will not be forgotten, and the means of acquiring reputation in the practice of the healing art will be to get the State trumpeters on the side of youth. The bar, too, will be made so subservient that a young gentleman will have no chance to obtain a character, or clients, but by falling in with the views of the judges and their creators. Even the theaters and actors and actresses must become politicians, and convert the public pleasures into engines of popularity for the governing members of the House. The press, that great barrier and bulwark of the rights of mankind, when it is protected in its freedom by law, can now no longer be free; if the authors, writers, and printers will not accept of the hire that will be offered them, they must submit to the ruin that will be denounced against them. The presses, with much secrecy and concealment, will be made the vehicles of calumny against the minority, and of panegyric and empirical applause of the leaders of the majority, and no remedy can possibly be obtained. In one word, the whole system of affairs, and every conceivable motive of hope and fear, will be employed to promote the private interests of a few, and their obsequious majority; and there is no remedy but in *arms!*''

Sad remedy! He hoped the people of this country would never be forced to have recourse to it. If the fatal tendency of certain measures be what is here described (and he believed the representation to be a just one), it behooved us to beware in time.

Mr. L. would be glad if gentlemen would inform the House of any good which would be derived from the passage of this bill —of any evil which it will remedy? If they could not do this, he further entreated them to think of the evils which it may produce. He feared it would lessen the confidence of the people in the Government. By the addresses which we see pour in from every quarter it would seem that this confidence is now possessed, and he hoped Government would be careful not to lose it. But to judge from addresses alone was but a fallacious mode of judging. In proof of this Mr. L. referred to Dalrymple's ''History of the Reign of James I,'' which shows that this monarch was overpowered with the most fulsome addresses, at a time when the people in general were disaffected to his government to the highest degree. This, he said, was a strong historical fact, which ought to have its due weight. The political situation of this country very much resembles that of England at the time alluded to.

The effect of this bill may be to lift a few men into consequence who were never of any before, and to ruin two or three others; but it will be in vain to attempt to hide the misconduct

of Government from the people. The thing will defeat its own end. They will, besides, be struck with the flagrant breach which it makes in the Constitution, compared with which, he looked upon war, pestilence, and every other calamity as of trifling consequence. Time may remove these, but of an unforgiving, dreary despotism who can see the end? God forbid that we should ever be called upon to employ our talents to the overturning of such a government!

Mr. Gallatin observed: The gentleman from Massachusetts [Mr. Otis] had attempted to prove the constitutionality of the bill by asserting, in the first place, that the power to punish libels was originally vested in Congress by the Constitution, and, in the next place, that the amendment to the Constitution, which declares that Congress shall not pass any law abridging the liberty of the press, had not deprived them of the power originally given. In order to establish his first position the gentleman had thought it sufficient to insist that the jurisdiction of the courts of the United States extended to the punishment of offences at common law, that is to say, of offences not arising under the statutes or laws of the Union—an assertion unfounded in itself, and which, if proven, would not support the point he endeavors to establish. That assertion was unfounded; for the judicial authority of those courts is, by the Constitution, declared to extend to cases of admiralty, or affecting public ministers; to suits between States, citizens of different States, or foreigners, and to cases arising under the Constitution, laws, and treaties, *made* under the authority of that Constitution; excluding, therefore, cases not arising under either—cases arising under the common law. Nor was that gentleman more fortunate in his choice of arguments when he thought he could derive any proofs in support of the supposed jurisdiction of the Federal courts from the number of technical expressions in the Constitution—such as *writ of habeas corpus, levying war,* etc., which, as he supposed, recognized the common law. He had there confounded two very distinct ideas—the *principles* of the common law, and the *jurisdiction* over cases arising under it. That those principles were recognized in the cases where the courts had jurisdiction was not denied; but such a recognition could by no means extend the jurisdiction beyond the specific cases defined by the Constitution. But, had that gentleman succeeded in proving the existence of the jurisdiction of the Federal courts over offences at common law, and more particularly over libels, he would thereby have adduced the strongest argument against the passing of this bill; for, if the jurisdiction did exist, where was the necessity of now

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giving it? If the judicial authority of the Federal courts, by the Constitution, extended to the punishment of libels, it was unnecessary to pass this law, which, modified as it is, was intended by its supporters for the sole purpose of enacting into a law of the United States the common law of libels. The question was not whether the courts of the United States had, without this law, the power to punish libels, but whether, supposing they had not the power, Congress had that of giving them this jurisdiction—whether Congress were vested by the Constitution with the authority of passing this bill?

The only clause of the Constitution which can give a color to the authority now claimed is that which gives Congress authority to make all laws which shall be necessary and proper for carrying into execution the power vested by the Constitution in the Government of the United States, or in any department or officer thereof.

But the language here used was strict and precise; it gave not a vague power, arbitrarily, to create offences against Government, or to take cognizance of cases which fall under the exclusive jurisdiction of the State courts. In order to claim any authority under this clause the supporters of this bill must show the specific power given to Congress or to the President, by some other part of the Constitution, which would be carried into effect by a law against libels. They must go further—they must show which of those constitutional powers it was which could not be carried into effect, unless this law was passed. It was in that manner that the authority of Congress had heretofore been exercised; they had passed no penal laws, except such as arose from the necessity of carrying into effect some of the specific powers vested in them. Thus, as they had the exclusive power to establish post roads, they had made it penal to rob the mail; and as they were authorized to lay taxes, they had passed laws to punish frauds of revenue officers, or evasions of the revenue laws. But, until this bill was proposed, Congress had never attempted to define or punish offences generally; and the gentleman from Massachusetts was mistaken when he had stated that forgery was generally punishable by the laws of the United States. It was only in those specific cases defined by the Constitution, or which arose from some power heretofore exercised by Congress, that forgery came under the jurisdiction of the Federal courts.

The bill now under discussion justified the suspicions of those who, at the time of the adoption of the Constitution, had apprehended that the sense of that generally expressed clause might

be distorted for that purpose. It was in order to remove these fears that the amendment, which declares that Congress shall pass no law abridging the freedom of speech or the liberty of the press, was proposed and adopted—an amendment which was intended as an express exception to any supposed general power of *passing laws*, etc., vested in Congress by the other clause. The sense in which he and his friends understood this amendment was that Congress could not pass any law to punish any real or supposed abuse of the press. The construction given to it by the supporters of the bill was that it did not prevent them to punish what they called the licentiousness of the press, but merely forbade their laying any previous restraints upon it. It appeared to him preposterous to say that to punish a certain act was not an abridgment of the liberty of doing that act. It appeared to him that it was an insulting evasion of the Constitution for gentlemen to say, "We claim no power to abridge the liberty of the press; *that* you shall enjoy unrestrained. You may write and publish what you please, but if you publish anything against us we will punish you for it. So long as we do not prevent, but only punish your writings, it is no abridgment of your liberty of writing and printing."

The Government has existed for more than nine years without the assistance of this law. This law is not, then, necessary at all times; indeed, it is intended only to last for three years. Let, then, gentlemen prove that that necessity now exists which heretofore did not exist. It is an obligation laid upon them by the Constitution itself, evidently, to prove that an alteration has taken place in the situation of this country which impels us to pass this law. And yet they are silent. Where is the House to find proofs of that wonderful, yet unknown, change in our circumstances? Will they derive their information from the newspaper scraps with which they had been entertained, the other day, by a member from Connecticut? as if there was anything alarming or novel in paragraphs blaming or attacking certain measures or certain individuals of Government; as if the present Administration felt more afraid of newspaper abuse than former Administrations, or than other men. Or is Congress to receive a conviction of that alteration from the plot which the gentleman from South Carolina [Mr. Harper] had promised to unfold—a plot in which not one member on this floor did believe, when it was announced, and in which he suspected the gentleman himself had long since discovered he had been mistaken? Leaving, however, those ridiculous grounds of alarm (and, ludicrous as it might appear to an indifferent hearer, they were the only ones

that had yet been alleged in support of this bill), Mr. G. would ask whether gentlemen did not believe themselves that at no time had there been less to be apprehended from presses that circulated opinions in opposition to the measures of Government; that no reason could be adduced why this bill should pass, except that a party in the United States, feeling that they had more power, were not afraid of passing such a law, and would pass it, because they felt themselves so strong—so little in need of the assistance of that measure—that they expected to be supported by the people, even in that flagrant attack upon the Constitution?

But if gentlemen believe this bill *necessary* in order to enable this House to do their duty, they must recollect that this House is composed of individuals, and that, according to their own doctrine, in order to insure a conscientious vote in the whole House, every individual, and not a majority of the House, ought to be equally sheltered by this law from the abuse of printers. While, therefore, they support the bill in its present shape, do they not avow that the true object of the law is to enable one party to oppress the other; that they mean to have the power to punish printers who may publish against them, while their opponents will remain alone, and without redress, exposed to the abuse of ministerial prints? Is it not their object to frighten and suppress all presses which they consider as contrary to their views; to prevent a free circulation of opinion; to suffer the people at large to hear only partial accounts, and but one side of the question; to delude and deceive them by partial information, and, through those means, to perpetuate themselves in power?

In vain did those gentlemen attempt to shelter themselves under the different pleas that this bill could only affect the authors of false publications, since any man might justify his writings by giving in evidence the truth of his assertions; and that it created no new offence, but only reënacted what had always been the common law of libels.

It was true that, so far as related merely to facts, a man would be acquitted by proving that what he asserted was true. But the bill was intended to punish solely writings of a political nature, libels against the Government, the President, or either branch of the legislature; and it was well known that writings, containing animadversions on public measures almost always contained, not only facts, but opinions. And how could the truth of opinions be proven by evidence? If an individual thinking, as he himself did, that the present bill was unconstitutional, and that it had been intended, not for the public good, but solely for party purposes, should avow and publish his opin-

ion, and if the Administration thought fit to prosecute him for that supposed individual offence, would a jury, composed of the friends of that Administration, hesitate much in declaring the opinion ungrounded, or, in other words, false and scandalous, and its publication malicious? And by what kind of argument or evidence, in the present temper of parties, could the accused convince them that his opinion was true?

As to the assertion that the bill, under its present modifications, was nothing more than the common law of libels, he would observe that no gentleman could be satisfied that the few lines of which the bill consisted contained the genuine and unadulterated principles of the law of libels—a law which had arisen from the precedents and judicial decisions of three centuries; a law which, like every other branch of the common law of England, had received different modifications in the different States, so as to be now dissimilar in every one. He had not critically examined the bill in that point of view; but he would just notice a mode of expression which, if strictly construed, would introduce a principle now unknown to the common law of libels. By the bill, every person who should write, print, utter, or publish, etc., was guilty; so that a person only writing what might be adjudged a libel, although he neither printed, published, read, nor communicated his work to anyone, and although he did not intend it for publication, might, like Algernon Sidney, be found guilty, under this act, for the offence only of having thrown his ideas on paper.

But, although there might be no change made by this bill in the law of libels, there was an all-important one made by the transfer of jurisdiction. Heretofore the cognizance of offences of this nature had exclusively belonged to the State courts, and the mode of trial was essentially altered by being had before the Federal courts. It was not only by being deprived of the benefits of a trial by a jury of their vicinage that the accused persons were put in a worse situation; the manner of selecting the jury was, in some States, very different in the courts of the United States from what it was in the State courts. In Pennsylvania, if the prosecution was before the State court, the jury would be summoned by the sheriff, but if before the Federal court, the marshal, in that case, would summon the jury. The difference in this case was immense. The sheriff was the officer of the people, the marshal was the creature of the Executive. And, however immaterial this might be in ordinary suits or prosecutions, when the offences were, as under this bill, altogether of a political nature; when the supposed crimes to be punished were a libel

against the Administration, what security of a fair trial remained to a citizen, when the jury was liable to be packed by the Administration, when the same men were to be judges and parties?

After having given this short sketch of the features of this bill Mr. G. said he had intended to make some general remarks on the nature of political libels, or of writings against the measures of the Administration, and on the propriety of interfering at all by law with them. The lateness of the hour prevented him. He would only observe that laws against writings of this kind had uniformly been one of the most powerful engines used by tyrants to prevent the diffusion of knowledge, to throw a veil on their folly or their crimes, to satisfy those mean passions which always denote little minds, and to perpetuate their own tyranny. The principles of the law of political libels were to be found in the rescripts of the worst Emperors of Rome, in the decisions of the Star Chamber. Princes of elevated minds, governments actuated by pure motives, despising the slanders of malice, had ever listened to the animadversions made on their conduct. They knew that the proper weapon to combat error was truth, and that to resort to coercion and punishments in order to suppress writings attacking their measures was to confess that these could not be defended by any other means.

Mr. Harper said, in the first place, gentlemen who oppose the bill had said that hitherto the Government of the United States had existed and prospered without a law of this kind, and then exultingly asked: "What change has now taken place to render such a law necessary?" The change, in his opinion, consisted in this: that, heretofore, we had been at peace and were now on the point of being driven into a war with a nation which openly boasted of its party among us, and its "diplomatic skill," as the most effectual means of paralyzing our efforts and bringing us to its own terms. Of the operations of this skill among us, by means of corrupt partisans and hired presses, he had no doubt; he was every day furnished with stronger reasons for believing in its existence and saw stronger indications of its systematic exertion. We knew its effects in other countries, where it had aided the progress of France much more effectually than the force of her arms. He knew no reason why we should not harbor traitors in our bosom as well as other nations; and he did most firmly believe that France had a party in this country, small, indeed, and sure to be disgraced and destroyed as soon as its designs should become generally known, but active, artful, and determined, and capable, if it could remain concealed, of effect-

ing infinite mischief. This party was the instrument of her "diplomatic skill." By this party she hoped to stop "the wheels of our Government," enchain our strength, enfeeble our efforts, and, finally, subdue us; and, to repress the enterprises of this party he wished for a law against sedition and libels, the two great instruments whereby France and her partisans had worked for the destruction of other countries, and he had no doubt were now working, he trusted unsuccessfully, for the destruction of this.

He could not, therefore, believe that our safety hitherto ought to lull us into security now; unless gentlemen could convince him that, because a person had existed in health for nine years, he ought to refuse medicine when he at length felt the approach of disease; or, when he saw the daggers of assassins everywhere whetted against him, should neglect to put on a coat of mail because for nine years he had not been assailed. The coat of mail which Congress was about to provide in this law might turn away the point of some dagger aimed at the heart of the Government, and, in that case, it would, he said, be matter of rejoicing that the bill had passed. Should no such case occur, then, like a sword, which there has been no occasion to draw, it will have done no harm.

He admitted that there was plausibility in the objection founded on that part of the Constitution which provides that "Congress shall pass no law to abridge the liberty of speech or of the press." He held this to be one of the most sacred parts of the Constitution, one by which he would stand the longest and defend with the greatest zeal. But to what, he asked, did this clause amount? Did this liberty of the press include sedition and licentiousness? Did it authorize persons to throw, with impunity, the most violent abuse upon the President and both Houses of Congress? Was this what gentlemen meant by the liberty of the press? As well might it be said that the liberty of action implied the liberty of assault, trespass, or assassination. Every man possessed the liberty of action; but, if he used this liberty to the detriment of others, by attacking their persons or destroying their property, he became liable to punishment for this licentious abuse of his liberty. The liberty of the press stood on precisely the same footing. Every man might publish what he pleased; but, if he abused this liberty so as to publish slanders against his neighbor, or false, scandalous, and malicious libels against the magistrates or the Government, he became liable to punishment. What did this law provide? That, if "any person should publish any false, scandalous, and malicious

libel against the President or Congress, or either House of Congress, with intent to stir up sedition, or to produce any other of the mischievous and wicked effects particularly described in the bill, he should, on conviction before a jury, be liable to fine and imprisonment." A jury is to try the offence, and they must determine, from the evidence and the circumstances of the case, first, that the publication is *false,* secondly, that it is *scandalous,* thirdly that it is *malicious,* and, fourthly, that it was made with the *intent* to do some one of the things particularly described in the bill. If, in any one of these points, the proof should fail, the man must be acquitted; and it is expressly provided that he may give the *truth* of the publication in evidence as a justification. Such is the substance of this law; and yet it is called a law abridging the liberty of the press! That is to say, that the liberty of the press implies the liberty of publishing, with impunity, false, scandalous, and malicious writings, with intent to stir up sedition, etc. As well might it be said that the liberty of *action* implies the liberty to rob and murder with impunity!

Whence was it, Mr. H. asked, that all confidence in the trial by jury was now discarded by those gentlemen who have heretofore so warmly and so justly sounded its praises? Why are juries, in whose hands the fortunes, the lives, and the reputations of the citizens had been safely deposited by our laws and Constitutions, no longer to be trusted when it is in question to punish those who, with wicked intent, publish false, scandalous, and malicious libels against the President and Congress? Is this offence of so sacred a nature, so dear to gentlemen, that the authors of it cannot be trusted in the hands of a jury of their fellow-citizens?

Such, Mr. H. said, had ever been his impressions concerning the liberty of the press, which he deemed to stand on the same ground, and to be liable to the same restraints by law, as the liberty of action; nor could he be persuaded that the liberty of the press, as understood by the Constitution, could ever be abridged by a law to punish, on conviction before a jury, the publication of false, scandalous, and malicious libels. He was very happy to find his opinions fully supported by those of a most venerable man, whose character was admired and revered by all, and who could never be suspected of wishing to abridge the liberty of the press. He held in his hand a little volume of essays by the late Dr. Franklin, among which there was one entitled "An Account of the Highest Court of Judicature in Pennsylvania, *viz.:* the Court of the Press."

Speaking of "the checks proper to be established against the

abuses of power in the court of the press" the venerable and ingenious author says:

"Hitherto there are none. But since so much has been written and published on the Federal Constitution, and the necessity of checks, in all other parts of good government, has been so clearly and learnedly explained, I find myself so far enlightened as to suspect some check may be proper in this part also; but I have been at a loss to imagine any that may not be construed an infringement of the sacred liberty of the press. At length, however, I think I have found one that, instead of diminishing general liberty, will augment it; which is by restoring to the people a species of liberty of which they have been deprived by our laws; I mean the liberty of the *cudgel!* In the rude state of society, prior to the existence of laws, if one man gave another ill language, the affronted person might return it by a box on the ear; and, if repeated, by a good drubbing; and this without offending against any law; but now the right of making such returns is denied, and they are punished as breaches of the peace, while the right of abusing seems to remain in full force; the laws made against it being rendered ineffectual by the *liberty of the press.*

"My proposal, then, is to leave the liberty of the press untouched, to be executed in its full extent, force, and vigor, but to permit the liberty of the cudgel to go with it, *pari passu.* Thus, my fellow-citizens, if an impudent writer attacks your reputation, dearer to you perhaps than your life, and puts his name to the charge, you may go to him, as openly, and break his head. If he conceals himself behind the printer, and you can nevertheless discover who he is, you may, in like manner, waylay him in the night, attack him behind, and give him a good drubbing. If your adversary hires better writers than himself to abuse you more effectually, you may hire brawny porters, stronger than yourself, to assist you in giving him a more effectual drubbing. Thus far goes my project as to *private* resentment and restitution. But if the government should ever happen to be affronted, as it ought to be, with the conduct of such writers, I would not advise proceeding immediately to these extremities, but that we should, in moderation, content ourselves with tarring and feathering and tossing them in a blanket.

"If, however, it should be thought that this proposal of mine may disturb the public peace, I would then humbly recommend to our legislators to take up the consideration of both liberties, that of the press, and that of the cudgel; and, by an explicit law, mark their extent and limits; and, at the same time that they secure the person of a citizen from assaults, they would likewise provide for the security of his reputation."

Thus we see, continued Mr. H., that this great man, the champion of liberty, who spent his life in promoting her cause, did not think that the liberty of the press would be abridged by an explicit law for curbing its licentiousness. Supported by this great authority, I can never believe that a law to punish the publication of false, scandalous, and malicious libels, on conviction by a jury, is a law "to abridge the liberty of the press," as intended by the Constitution.

The gentleman from New York [Mr. Livingston] has thought proper to quote a very venerable authority, the "Defence of the

American Constitution," by the present President of the United States, in order to prove that this Government is advancing rapidly to a despotism. The passage is very striking, and most forcibly marks the steps of progressing tyranny. Most of those steps, the gentleman declares, have been, or are on the point of being, taken by this Government. But there is one part of the passage which he has forgotten to notice. Let me be permitted to recall it to his attention. The learned and venerable author is treating of the tendency toward despotism which exists in a Government composed of one branch, or whose whole powers are concentrated in one popular assembly; and, in order to warn us of the dangers of such a government, and inculcate the necessity of a division of power for the support of liberty, he tells us how the great men, the heads and leaders of the great and wealthy families, find their way into such an assembly and acquire an absolute influence over its decisions. He then goes on to mark the steps, those very steps, quoted by the gentleman from New York, whereby they render their seats permanent, stifle opposition, subjugate the assembly, usurp its powers, and, at length, establish an oligarchy or a despotism on the ruins of the democracy. Let the House recollect how persevering and vigorous have been the efforts of the gentleman from New York and his political associates to pave the way for this state of things by concentrating gradually, sometimes under one pretext and sometimes under another, all the powers of our Government in this House, by demolishing, piece by piece, the checks established in the Senate and the executive power; and then it will be able to judge to whom his quotation is most applicable; to himself and his friends, or to those who strenuously have opposed, and who do still oppose, these his enterprises; to those who struggle to preserve the division of power and the balance of the Constitution, or to those who exert all their might to destroy them both and reduce the Government to a single representative democracy on which that oligarchy, so earnestly panted after by self-named friends of the people and exclusive patriots, is so speedily and so certainly engrafted.

The bill was then passed—yeas 44, nays 41.

Of the Sedition Law Alexander Johnston remarks in his "American Political History":

"If the doctrine of the Federalists was correct (and it was certainly never contradicted by the Federal courts until fourteen years had passed, and the judiciary, with the other departments

of Government, had fallen into Democratic hands), then the Sedition Law was a very salutary remedial modification of the common law, since it allowed the truth to be given in evidence and laid down bounds of punishment which the judges could not pass. If, on the other hand, the Republican doctrine was correct, the Sedition Law was a pernicious precedent, since, by making a common-law offence statutory, it implied a common-law criminal jurisdiction in the Federal courts, wherever statutes did not interfere. The Republicans had little legal talent in their ranks in 1798 and had made little open opposition to the Federalist claims on this point."

This last statement is surprising, coming as it does from such a distinguished writer on American politics. Certainly the foregoing debate proves the exact contrary of the assertion: the Federalists had no representatives in Congress whose legal ability was at all equal to that of Gallatin and Livingston, and these brilliant and learned debaters certainly made the boldest, strongest, and most thorough opposition to the Federalist claims on the point in question. The only explanation of Professor Johnston's error is that, instead of consulting the original sources, he must have followed Senator Benton's "Abridgment of the Debates of Congress," in which the final exhaustive argument of Gallatin against the encroachment of the Federal judiciary on the jurisdiction of the State courts is entirely omitted, and the argument of Livingston on the same point is too greatly abridged, while space is unnecessarily given to Livingston's argument against the obvious unconstitutionality of the restriction of liberty of the press. Nevertheless Benton gives very fully the arguments against Federal jurisdiction which were presented by Nathaniel Macon, whose legal talent was at least equal to that of any Federalist Representative.

CHAPTER IV

The Kentucky and Virginia Resolutions

Partisan Enforcement of the Sedition Law—Resolutions against the Law Are Adopted by the Kentucky and Virginia Legislatures, Drafted Respectively by Thomas Jefferson and James Madison—Debate in the Virginia Legislature on the Resolutions: Summaries by Sen. Thomas H. Benton [Mo.] of the Arguments—Address to the People by the Virginia Legislature—Address by the Minority of the Virginia Legislature in Favor of the Alien and Sedition Laws—Replies to the Kentucky and Virginia Resolutions by Other State Legislatures—Supplementary Resolutions of the Kentucky Legislature—Madison's Report on the Virginia Resolutions—Supplementary Resolution of the Virginia Legislature—Purposes of Jefferson and Madison in the Resolutions: the Calling of a National Convention of the States to Amend the Constitution by Giving Three-fourths of the States a Veto on Federal Acts, and Arousing Public Opinion against the Federalists—Failure of the First Purpose and Success of the Second—Subsequent Resolutions by Various States on Federal Usurpation—Common Law Jurisdiction of the Federal Courts—Justice Joseph Story Upholds It against the Theory of Madison in the Virginia Resolutions—First Inaugural of President Jefferson: "The Road to Liberty."

AS has been noted no prosecutions were made under the Alien Laws. Those that were instituted under the Sedition Law were plainly partisan in their animus. Thus, as Professor Johnston instances, Hamilton, between whom and Adams enmity had arisen through the political ambition either of one or the other, or of both, published an attack on President John Adams, charging him with "disgusting egotism, distempered jealousy, ungovernable indiscretion, and arrogant pretence to superior and exclusive merit," and yet, because of his prominence in his party, Hamilton was not prosecuted, while certain Republicans were arrested and tried (though unsuccessfully) for the mere circulation of petitions against the law or for the *lèse-majesté* of wishing,

on the occasion of a military salute to the President, that the wadding of a cannon might strike him in the broadest part of his person. Some of the Republican leaders expressed the apprehension that, in the event of their party securing a majority in the next House, the Federalists would attempt to remove enough of their opponents to retain the present control. This fear, however, proved unfounded.

According to a long accepted view, as acknowledged leaders of their party Jefferson and Madison proceeded to procure the overthrow of the obnoxious Sedition Law by organizing a counter-revolution against it in the State legislatures. They very judiciously selected the strongly Republican States of Kentucky and Virginia in which to begin the movement. For the legislature of the former State Jefferson prepared certain resolutions.[1] They were passed by the House on November 10, by the Senate on November 13, and signed by the Governor on November 19, 1798. Their substance is as follows:

The Kentucky Resolutions

Drafted by Thomas Jefferson

1. The union of the States is a *compact* by which each State delegated to the Federal Government definite powers, reserving to itself the residuary mass of right to their own self-government. When, therefore, the Federal Government assumes undelegated powers its acts are void. The Federal Government was not constituted by the compact a final judge of the extent of its delegated powers, since this would have made its discretion, and not the Constitution, the measure of its powers. The Constitution established no common judge between the Federal Government and the State governments, and, according to the practice in all compacts of this kind, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

2. Congress has the right to pass laws for the punishment of no other crimes than those expressly mentioned in the Constitution as under its jurisdiction.

[1] For a recent, and, to the editor's mind, a more acceptable theory of the origin of these resolutions, see the Introduction to Volume V, by President Warfield, on this subject.

3. By the general principle of the compact (the Constitution) power over speech and the press is reserved to the States, and by a specific amendment thereto (No. 1) is expressly prohibited to the Federal Government. Therefore, by 1 and 2, the Sedition Law is void, and, by 1,

4. The Alien Laws are void.

5. The Alien Laws are also void because of Article I, Section 9, Par. 1, of the Constitution, which reserves to the States until 1808 all control over the migration and importation of such persons as they shall think proper to admit.

6. The Alien Laws are void, because they are contrary to the amendments to the Constitution, which provide that "no person shall be deprived of liberty without due process of law" (No. V) and that "in all criminal prosecutions the accused shall enjoy the right of a public trial by an impartial jury," etc. (No. VI), and also because the Alien Laws transfer the jurisdiction of aliens from the courts to the President, contrary to Article III, Section 1 of the Constitution.

7. The broad construction, by the Administration, of Article I, Section 8, Par. 1, of the Constitution: "Congress shall have power to collect taxes, etc., and *provide for the common defence and general welfare,*" and of Par. 18 in the same section: "To make all laws . . . necessary . . . for carrying into execution the . . . powers vested . . . in the Government," is inadmissible, since these powers are subsidiary to the execution of limited powers mentioned in the context, and, if the paragraphs are construed independently as giving unlimited powers, the whole residue of the Constitution will be destroyed. All proceedings under a broad construction of these paragraphs will be a fit and necessary subject for revision at a time of greater tranquillity, and the specific Alien and Sedition Laws call for immediate redress.

8. These resolutions shall be transmitted to the Senators and Representatives from Kentucky, who are enjoined to use their efforts to procure a repeal of the said acts.

9. These resolutions shall be transmitted to the legislatures of the States as an expression of Kentucky's views of the Constitution, and its fears of the destruction of the intent of that instrument and of the rights of the States by the general Government and, especially, the President, who is arrogating to himself powers which may lead to his becoming accuser, counsel, judge, and jury, his suspicions being the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction. A similar assumption of

powers is in process in Congress, which may lead to the exportation or punishment, by the majority, of the minority, and of officers of the various States who oppose their plans. These usurpations, unless arrested on the threshold, may tend to drive the States into revolution and so furnish new arguments for despots against republics. It would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: confidence is everywhere the parent of despotism; free government is founded in jealousy, and not in confidence. Hence the limits fixed in our Constitution. Let the honest advocate of confidence read the Alien and Sedition Laws and say if the Constitution was not wise in fixing these limits; let him say what this government is, if it be not a tyranny, when the President of our choice exercises unconstitutional powers over the friendly strangers to whom the mild spirit of our country and its laws had pledged hospitality and protection, and when Senators and Representatives of our choice uphold him in so doing, regarding more the bare suspicions of the President than the solid rights of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice.

In questions of power, then, let no more be said of confidence in man, but bind him down from mischief by the chains of the Constitution.

This commonwealth calls on its co-States to declare whether they believe the Alien and Sedition Acts are or are not authorized by the Federal compact, trusting that they will concur in her opinions of them as unconstitutional and as opening the way for the general Government to seize the rights of the States and destroy government by the consent of the governed, and that, recurring to their natural rights not made Federal, they will join with her in requesting the repeal of these acts at the next session of Congress.

Mr. Madison drafted the resolutions for the legislature of Virginia. For the text of these resolutions see the paragraphs in small type in "Madison's Report on the Virginia Resolutions" on page 105 ss. They were passed on December 24, 1798, after an animated debate. The following account of the debate is given by Senator Thomas H. Benton in his "Thirty Years' View":

The principal speakers in the Virginia legislature in opposition to the resolutions were: Mr. George Keith

Taylor, Mr. Magill, Mr. Brooke, Mr. Cowan, Gen. Henry Lee, and Mr. Cureton. Nearly the whole debate turned, not on the abstract propriety or expediency of such resolutions, but on the question whether the acts of Congress which were specially complained of were, in fact, unconstitutional. Beyond the discussion of this point the speakers dwelt only on the supposed "tendency" of such declarations to excite the people to insubordination and non-submission to the law.

Debate on the Virginia Resolutions

Legislature of Virginia, December, 1798

Mr. George K. Taylor complained at the commencement of his speech, that the resolutions "contained a declaration, not of opinion, but of fact"; and he apprehended that "the consequences of pursuing the advice of the resolutions would be insurrection, confusion, and anarchy."

"The members of that Congress which had passed those laws had been, so far as he could understand, since generally reëlected; therefore he thought the people of the United States had decided in favor of their constitutionality, and that such an attempt as they were then making to induce Congress to repeal the laws would be nugatory."

Mr. Brooke thought resolutions "declaring laws which had been made by the Government of the United States to be unconstitutional, null and void," were "dangerous and improper"; that they had a "tendency to inflame the public mind"; to lessen the confidence that ought to subsist between the representatives of the people in the general Government and their constituents; and to "sap the very foundations of the Government by producing resistance to its laws." He was equally opposed to any modification of them that should be "intended as an expression of the general sentiment on the subject, because he conceived it to be an improper mode by which to express the wishes of the people of the State on the subject."

General Henry Lee thought the alien and sedition laws "not unconstitutional"; but, if they were unconstitutional, he "admitted the right of interposition on the part of the General Assembly." But he thought these resolutions showed "indecorum and hostility," and were "not the likeliest way to obtain a repeal of the laws." He "suspected," in fact, that "the repeal of the laws was not the leading point in view," but that they "cov-

ered" the objects of "promotion of disunion and separation of the States." The resolutions "struck him as recommending resistance. They declared the laws null and void. Our citizens thus thinking would disobey the laws." His plan would be, if he thought the laws unconstitutional, to let the people petition, or that the legislature come forward at once, "with a proposition for amending the doubtful parts of the Constitution"; or with a "respectful or friendly memorial, urging Congress to repeal the laws." But he "admitted" the only right which the resolutions assert for the State, namely, the right "to interpose." The remarks of the other opponents to the resolutions were to the same effect.

On behalf of the resolutions the principal speakers were: Mr. John Taylor, of Caroline, who had introduced them; Mr. Ruffin, Mr. Mercer, Mr. Pope, Mr. Foushee, Mr. Daniel, Mr. Peter Johnston, Mr. Giles, Mr. James Barbour.

They obviated the objection of the speakers on the other side that the resolutions "contained a declaration not of opinion, but of fact," by striking out the words which, in the original draft, declared the acts in question to be "null, void, and of no force or effect"; so as to make it manifest, as the advocates of the resolutions maintained, that they intended nothing beyond an expression of sentiment. They obviated another objection which appeared in the original draft, which asserted the States *alone* to be the parties to the Constitution, by striking out the word "alone." They thoroughly and successfully combated both the "suspicion" that they hid any ulterior object of dissension or disunion, and the "apprehension" that the resolutions would encourage insubordination among the people. They acceded to and affirmed that their object was to obtain a repeal of the offensive measures; that the resolutions might ultimately lead to a convention for amending the Constitution, and that they were intended both to express and to affect public opinion; but nothing more.

The minority afterwards published its arguments in an "Address Containing a Vindication of the Constitutionality of the Alien and Sedition Laws." The pamphlet was intended to be an offset to the resolutions passed by the majority and was, like these, sent to the legislatures of the other States.

The majority sent along with its resolutions the following:

Address to the People

By the Virginia Legislature

Fellow-citizens: Unwilling to shrink from our representative responsibilities, conscious of the purity of our motives, but acknowledging your right to supervise our conduct, we invite your serious attention to the emergency which dictated the subjoined resolutions. While we disdain to alarm you by ill-founded jealousies, we recommend an investigation guided by the coolness of wisdom, and a decision bottomed on firmness but tempered with moderation.

It would be perfidious in those intrusted with the guardianship of the State sovereignty, and acting under the solemn obligation of the following oath—"I do swear that I will support the Constitution of the United States"—not to warn you of encroachments, which, though clothed with the pretext of necessity, or disguised by arguments of expediency, may yet establish precedents which may ultimately devote a generous and unsuspicious people to all the consequences of usurped power.

Encroachments springing from a government whose organization cannot be maintained without the coöperation of the States furnish the strongest excitements upon the State legislatures to watchfulness, and impose upon them the strongest obligation to preserve unimpaired the line of partition.

The acquiescence of the States, under infractions of the Federal compact, would either beget a speedy consolidation, by precipitating the State governments into impotency and contempt, or prepare the way for a revolution by a repetition of these infractions until the people are aroused to appear in the majesty of their strength. It is to avoid these calamities that we exhibit to the people the momentous question whether the Constitution of the United Sates shall yield to a construction which defies every restraint and which overwhelms the best hopes of republicanism.

Exhortation to disregard domestic usurpation until foreign danger shall have passed is an artifice which may be forever used; because the possessors of power, who are the advocates for its extension, can never create national embarrassments, to be successively employed to soothe the people into sleep, while that power is swelling silently, secretly, and fatally. Of the same character are insinuations of a foreign influence, which seize upon a laudable enthusiasm against danger from abroad

and distort it by an unnatural application so as to blind your eyes against danger at home.

The Sedition Act presents a scene which was never expected by the early friends of the Constitution. It was then admitted that the State sovereignties were only diminished by powers specifically enumerated or necessary to carry the specified powers into effect. Now, Federal authority is deduced from implication; and, from the existence of State law, it is inferred that Congress possess a similar power of legislation; whence Congress will be endowed with a power of legislation in all cases whatsoever, and the States will be stripped of every right reserved, by the concurrent claims of a paramount legislature.

The Sedition Act is the offspring of these tremendous pretensions which inflict a death-wound on the sovereignty of the States.

For the honor of American understanding we will not believe that the people have been allured into the adoption of the Constitution by an affectation of defining powers, while the *preamble* would admit a construction which would erect the will of Congress into a power paramount in all cases and, therefore, limited to none. On the contrary, it is evident that the objects for which the Constitution was formed were deemed attainable only by a particular enumeration and specification of each power granted to the Federal Government; reserving all others to the people, or to the States. And yet it is in vain we search for any specified power embracing the right of legislation against the freedom of the press.

Had the States been despoiled of their sovereignty by the generality of the preamble, and, had the Federal Government been endowed with whatever they should judge to be instrumental toward the Union, justice, tranquillity, common defence, general welfare, and the preservation of liberty, nothing could have been more frivolous than an enumeration of powers.

All the preceding arguments, arising from a deficiency of constitutional power in Congress, apply to the Alien Act; and this act is liable to other objections peculiar to itself. If a suspicion that aliens are dangerous constitutes the justification of that power exercised over them by Congress, then a similar suspicion will justify the exercise of a similar power over natives; because there is nothing in the Constitution distinguishing between the power of a State to permit the residence of natives and aliens. It is, therefore, a right originally possessed, and never surrendered, by the respective States, and which is rendered dear and valuable to Virginia because it is assailed through

the bosom of the Constitution and because her peculiar situation renders the easy admission of artisans and laborers an interest of vast importance.

But this bill contains other features still more alarming and dangerous. It dispenses with the trial by jury; it violates the judicial system; it confounds legislative, executive, and judicial powers; it punishes without trial; and it bestows upon the President despotic power over a numerous class of men. Are such measures consistent with our constitutional principles? And will an accumulation of power so extensive in the hands of the Executive over aliens secure to natives the blessings of republican liberty?

If measures can mold governments, and if an uncontrolled power of construction is surrendered to those who administer them, their progress may be easily foreseen and their end easily foretold. A lover of monarchy who opens the treasures of corruption by distributing emolument among devoted partisans may, at the same time, be approaching his object and deluding the people with professions of republicanism. He may confound monarchy and republicanism by the art of definition. He may varnish over the dexterity which ambition never fails to display with the pliancy of language, the seduction of expediency, or the prejudices of the times; and he may come at length to avow that so extensive a territory as that of the United States can only be governed by the energies of monarchy; that it cannot be defended except by standing armies; and that it cannot be united except by consolidation.

Measures have already been adopted which may lead to these consequences. They consist—

In fiscal systems and arrangements, which keep a host of commercial and wealthy individuals imbodied and obedient to the mandates of the treasury;—

In armies and navies, which will, on the one hand, enlist the tendency of man to pay homage to his fellow-creature who can feed or honor him; and, on the other, employ the principle of fear by punishing imaginary insurrections under the pretext of preventive justice;—

In swarms of officers, civil and military, who can inculcate political tenets tending to consolidation and monarchy, both by indulgences and severities, and can act as spies over the free exercise of human reason;—

In restraining the freedom of the press and investing the Executive with legislative, executive, and judicial powers over a numerous body of men;—

And, that we may shorten the catalogue, in establishing, by successive precedents, such a mode of construing the Constitution as will rapidly remove every restraint upon Federal power.

Let history be consulted; let the man of experience reflect; nay, let the artificers of monarchy be asked what further materials they can need for building up their favorite system.

These are solemn but painful truths; and yet we recommend it to you not to forget the possibility of danger from without, although danger threatens us from within. Usurpation is indeed dreadful; but against foreign invasion, if that should happen, let us rise with hearts and hands united and repel the attack with the zeal of freemen who will strengthen their title to examine and correct domestic measures by having defended their country against foreign aggression.

Pledged as we are, fellow-citizens, to these sacred engagements, we yet humbly, fervently implore the Almighty Disposer of Events to avert from our land war and usurpation, the scourges of mankind; to permit our fields to be cultivated in peace; to instil into nations the love of friendly intercourse; to suffer our youth to be educated in virtue, and to preserve our morality from the pollution invariably incident to habits of war; to prevent the laborer and husbandman from being harassed by taxes and imposts; to remove from ambition the means of disturbing the commonwealth; to annihilate all pretexts for power afforded by war; to maintain the Constitution; and to bless our nation with tranquillity, under whose benign influence we may reach the summit of happiness and glory, to which we are destined by *nature* and *nature's God.*

Copies of the Virginia and Kentucky resolutions were sent to the "Co-States." Replies were made to Virginia by the legislatures of New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York (different replies from the Senate and the House), Delaware, Pennsylvania (the House), and Maryland. Replies to Kentucky were adopted by the following: New Hampshire (same as to Virginia), Vermont, Rhode Island (similar as to Virginia), Connecticut, New York (the House, same as to Virginia), Pennsylvania, Delaware (similar as to Virginia), Maryland (the House). All the replies were opposed to the resolutions.

The substance of the most important of the replies is here given:

Delaware considered the resolutions "a very unjustifiable interference with the general Government and constituted authorities of the United States and of dangerous tendency, and, therefore, not a fit subject for the further consideration of the general assembly."

Rhode Island considered that the Constitution gave to the Supreme Court of the United States the authority of deciding on the constitutionality of any act of Congress, and that for any State legislature to assume that authority would be: (1) blending together legislative and judicial powers; (2) disturbing the peace of the Union in case of a diversity of opinion between the States, each having no resort but its own arm for vindicating its opinions; (3) submitting most important questions of law to less competent tribunals; and, (4) breaking the express terms of the Constitution. Therefore the legislature declined officially to consider the constitutionality of the so-called Sedition and Alien laws, but expressed their private opinion that these laws were within the powers delegated to Congress, and promotive of the welfare of the United States. The legislature contemplated with extreme concern the many evil and fatal consequences which might flow from the very unwarrantable resolutions of Virginia.

Massachusetts declared: (1) that, though it held sacred the principle that consent of the people is the only pure source of just and legitimate power, yet, being bound by solemn oath to support the Constitution, it could not admit the right of a State legislature to denounce the Federal Administration formed under that Constitution to deal exclusively with national concerns; (2) that recourse to measures of extremity upon groundless or trivial pretexts had a strong tendency to destroy all rational liberty at home, and to weaken the nation abroad; (3) that the Constitution had not made the State legislatures judges of Federal acts, their proper course in case of grievance being to propose an amendment to the Constitution; and, (4) that the course proposed by Virginia would either reduce the Constitution to a mere cipher with the form and pageantry of authority without the energy of power, or, in the conflict of jurisdictions, weary the people into submission to a dictator. Therefore, while the legislature disclaimed its right to decide upon the constitutionality of Federal acts, still, lest its silence be construed as disapproving the laws complained against by Virginia, it explicitly declared these not only constitutional, but expedient and necessary.

The rights of aliens, it declared, were not particularly con-

templated in the Constitution, and they were entitled only to a temporary protection while they yield a temporary allegiance, and, when they became dangerous to the public safety, this protection ought to be withdrawn by Congress, which had not only the right but the duty to protect the nation from internal as well as external foes. The nation was menaced by war; the removal of aliens was, therefore, a wise precaution, justified by the usages of nations, and it had been properly committed to the national Executive.

The Sedition Act is equally defensible. Though the Virginia convention had recommended the amendment to the Constitution forbidding Congress to abridge freedom of speech or of the press, they surely did not expect that the amendment was to be construed by the convention.[1]

Plainly the Sedition Act did not abridge the liberty of speech or of the press, which was to utter truth, not propagate falsehood and slander. The act provided that courts and juries should decide whether or not the liberty of speech and press had been abused, and they thereby upheld this liberty rather than infringed upon it.

The Constitution assigns certain duties to the Federal Government. This would imply also the grant of means and power necessary to execute the duties. Yet the grant is not left to implication, but explicitly stated in the eighth section of Article I.

The Sedition Act provides a means for the Federal Government to execute the duty of national protection, which means is not specified in the Constitution, though the duty is. Analogically, the Constitution made no specific provision for the protection of the Supreme Court against disturbance of its proceedings, and the court has enforced its implied right to protect itself by adopting the practice of the common law on this point. Congress could, however, have constitutionally passed a statute effecting this protection.

The President is impeded in performing his constitutional duties by scandalous misrepresentations tending directly to rob him of the public confidence. Therefore Congress has provided him in the Sedition Law the means to perform his duties efficiently.

Had the Constitution withheld from Congress power to provide such means for the execution of government, then

[1] This position is based on the principle that, in construing an equivocal statute, law does not concern itself with the intention of its drafter or even its mover, but with that of the majority which passed it.

it would have made the officials responsible for effects, without giving them control over the causes which naturally produce these effects, and so it would have failed of achieving its object as stated in its preamble.

Sedition and conspiracy were punishable by the common law in the courts of the United States before the act in question was passed by Congress. The act is, in certain respects (such as the mitigation of punishment, etc.), an *amelioration* of the common law.

The act is for the benefit of officers only in their character of agents of the people, and, therefore, it is for the benefit of the people, and not the injury of them.

The act is necessary because an audacious and unprincipled spirit of falsehood and abuse has been too long unremittingly exerted for the purpose of perverting public opinion, and threatened to undermine and destroy the whole fabric of government.

These opinions have been endorsed by our constituents in reëlecting those Representatives who voted for the measures complained of by Virginia. And the citizens of Massachusetts are not indifferent to their constitutional rights; on the contrary, they see that their freedom, safety, and happiness require that they should defend the Government and its constitutional measures against the open or insidious attack of any foe, whether foreign or domestic.

Lastly, the legislature of Massachusetts feel a strong conviction that the several United States are connected by a common interest which ought to render their union indissoluble; and this State will always coöperate with its confederate States in rendering that union productive of mutual security, freedom, and happiness.

PENNSYLVANIA answered Kentucky that the people of the United States had vested the construction of the Constitution in the Federal judiciary, and, therefore, the declaration by a State that any Federal act was void was a revolutionary measure destructive of the purest principles of our State and national compacts.

It considered as abhorrent the statements of the Kentucky legislature that "confidence is everywhere the parent of despotism," and that "free governments are founded in jealousy." Such a principle, it said, cut all social bonds, and renewed the state of savagery. Governments truly republican and free are eminently founded on confidence; their execution is committed to representatives in whom the people trust. No portion of

the people can assume the province of the whole, nor resist its combined will.

The Alien and Sedition Laws are expressive of this combined will—a part of the system of defence against the seduction and aggressions of France. They are terrifying only to the flagitious and designing. Loud and concerted appeals against them made by a minority to the passions of the people will produce effects more violent than useful.

Pennsylvania answered Virginia briefly to the same effect: Her resolutions tended to excite unwarrantable discontents and to destroy the very existence of our Government.

New York answered through its senate that, "not perceiving that the rights of the particular States have been violated, nor any unconstitutional powers assumed by the general Government, the senate cannot forbear to express the anxiety and regret with which they observe the inflammatory and pernicious sentiments and doctrines which are contained in the resolutions of the legislatures of Virginia and Kentucky—sentiments and doctrines no less repugnant to the Constitution of the United States, and the principles of their union, than destructive to the Federal Government, and unjust to those whom the people have elected to administer it."

Therefore the senate deemed it a duty to bear unequivocal testimony against such sentiments and doctrines explicitly and to declare their incompetency to supervise the acts of the general Government.

Connecticut explicitly disavowed the principles contained in the Virginia resolutions, and it justified the Federal acts of which the resolutions complained as rendered necessary by the exigency of the country and passed by the constituted authorities.

New Hampshire, which had received also the Kentucky resolutions, expressed a firm resolution to defend the Constitutions of the United States and the State against every aggression, foreign or domestic, and to this end to support the measures complained of. The Federal judiciary, it said, and not a State legislature, is the proper tribunal to determine the constitutionality of Federal laws.

If the legislature of New Hampshire, for mere speculative purposes, were to express an opinion on the so-called "Alien and Sedition Bills," that opinion would be that these acts are constitutional, and, in the present critical stage of our country, highly expedient. As to this constitutionality and this expediency the legislature of Virginia was referred to the clear

demonstrations on these points made by members of its minority (see page 94).

VERMONT resolved that the resolutions of Virginia were unconstitutional in their nature and dangerous in their tendency, and that the Federal judiciary and not a State legislature was the proper body to decide on the constitutionality of Federal acts.

THE SUPPLEMENTARY RESOLUTION OF KENTUCKY

The legislature of Kentucky replied to the answers of the several States, made to its own resolutions and those of Virginia, by a supplementary resolution, passed unanimously in the House on November 14 and concurred in by the Senate on November 22, 1799.

The following is a condensation of the preamble and full text of the resolution:

The Kentucky legislature would be faithless to themselves and their constituents if they silently acquiesced in the answers to their former resolutions by the other States, Virginia excepted. It is needless to attempt to expose the unconstitutionality of the Alien and Sedition Acts more fully than we have done; we must lament, however, the unfounded suggestions and uncandid insinuations of the replies to our decent and temperate expressions of opinion. Faithful to the true principles of the Federal Union, unconscious of any designs to disturb the harmony of that Union, and anxious only to escape the fangs of despotism, the good people of this commonwealth are regardless of censure or calumniation. Lest, however, those of our fellow-citizens throughout the Union who so widely differ from us on those important subjects should be deluded by the expectation that we shall shrink from the principles contained in those resolutions; therefore

Resolved, That this commonwealth considers the Federal Union, upon the terms and for the purposes specified in the late compact, conducive to the liberty and happiness of the several States: That it does now unequivocally declare its attachment to the Union, and to that compact, agreeably to its obvious and real intention, and will be among the last to seek its dissolution: That, if those who administer the general Government be permitted to transgress the limits fixed by that compact, by a total disregard to the special delegations of power therein con-

tained, an annihilation of the State governments, and the creation upon their ruins of a general consolidated government will be the inevitable consequence: That the principle and construction, contended for by sundry of the State legislatures, that the general Government is the exclusive judge of the extent of the powers delegated to it, stop not short of *despotism*—since the discretion of those who administer the government, and not the *Constitution,* would be the measure of their powers: That the several States who formed that instrument, being sovereign and independent, have the unquestionable right to judge of the infraction: and, *That a nullification by those sovereignties of all unauthorized acts done under color of that instrument is the rightful remedy:* That this commonwealth does, under the most deliberate reconsideration, declare that the said Alien and Sedition Laws are, in their opinion, palpable violations of the said Constitution; and, however cheerfully it may be disposed to surrender its opinion to a majority of its sister States in matters of ordinary or doubtful policy, yet, in momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a silent acquiescence as highly criminal: That, although this commonwealth, as a party to the Federal compact, will bow to the laws of the Union, yet it does, at the same time, declare, that it will not now, or ever hereafter, cease to oppose, in a constitutional manner, every attempt at what quarter soever offered, to violate that compact: And, finally, in order that no pretext or arguments may be drawn from a supposed acquiescence on the part of this commonwealth in the constitutionality of those laws, and be thereby used as precedents for similar future violations of the Federal compact, this commonwealth does now enter against them its solemn protest.

The Virginia legislature referred the answers of the various States to a committee of which James Madison was chairman. During the session of 1799-1800 the committee made its report, which had been drafted by Madison.

This celebrated paper[1] is a long and exhaustive argument in defence of the legislature's resolutions, discussing them in their order. The following is an abstract of the report:

[1] It would seem that no praise was too extravagant for admirers of Madison in speaking of this Report. It was called the "Bible of Democracy," the "Second Declaration of Independence," etc.

Report on the Virginia Resolutions

James Madison

The *first* of the resolutions is in the words following:

"*Resolved,* That the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States, and the Constitution of this State, against every aggression, either foreign or domestic; and that they will support the Government of the United States in all measures warranted by the former."

No unfavorable comment can have been made on the sentiments here expressed. In their *next* resolution—

"The General Assembly most solemnly declares a warm attachment to the union of the States, to maintain which it pledges all its powers; and that, for this end, it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence and the public happiness."

No question can arise among enlightened friends of the Union as to the duty of watching over and opposing every infraction of those principles which constitute its basis, and a faithful observance of which can alone secure its existence and the public happiness thereon depending.

The *third* resolution is in the words following:

"That this Assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government, as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact—as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto have the right, and are in duty bound, to interpose, for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties appertaining to them."

In all the contemporary discussions and comments which the Constitution underwent, it was constantly justified and recommended on the ground that the powers not given to the Government were withheld from it; and that, if any doubt could have existed on this subject, under the original text of the Constitution, it is removed, as far as words could remove it, by the 12th Amendment,[1] which expressly declares "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

[1] Now the tenth.

The resolution proceeds to infer "That, in a case of a dangerous exercise of unwarranted powers, the States have the right to interpose for arresting the progress of the evil and for maintaining their rights within their respective limits."

It is a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts, that, where resort can be had to no tribunal superior to the authorities of the parties, the parties themselves must be the rightful judges in the last resort, whether the bargain made has been pursued or violated. The States, being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity that there can be no tribunal above their authority to decide, in the last resort, whether the compact made by them be violated; and, consequently, that they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition. In the case of ordinary conventions between different nations, where by the strict rule of interpretation a breach of a part may be deemed a breach of the whole—every part being deemed a condition of every other part, and of the whole—it is always laid down that the breach must be both wilful and material to justify an application of the rule. But, in the case of an intimate and constitutional union like that of the United States, the interposition of the parties can be called for by occasions only deeply and essentially affecting the vital principles of their political system.

Therefore the resolution specifies the object of the interposition to be arresting the progress of the evil of usurpation and maintaining the authorities, rights, and liberties appertaining to the States as parties to the Constitution.

If the deliberate exercise of dangerous powers, palpably withheld by the Constitution, could not justify such actions, there would be an end to all relief from usurped power.

But it is objected that the judicial authority is to be regarded as the sole expositor of the Constitution in the last resort. The answer to this is that the judicial department is not the last resort in relation to the rights of the parties to the constitutional compact, from which the judicial, as well as the other departments, hold their delegated trusts. On any other hypothesis the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others in usurped powers might subvert forever and beyond the possible reach of any rightful remedy the very Constitution which all were instituted to preserve.

The fourth resolution stands as follows:—

"That the General Assembly doth also express its deep regret that a spirit has, in sundry instances, been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which, having been copied from the very limited grant of powers in the former Articles of Confederation, were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases, and so as to consolidate the States, by degrees, into one sovereignty, the obvious tendency and inevitable result of which would be to transform the present Republican system of the United States into an absolute, or at best a mixed monarchy."

The Alien and Sedition Laws are among those alluded to as indicating the spirit of the Federal Government. The phrases construed are: "Providing for the common defence and general welfare" [Preamble].

In Article VII of the "Articles of Confederation" these phrases are used, yet they were not broadly construed as now. By their incorporation in the Constitution it was evidently the intention of the framers of the new instrument to perpetuate the old construction. Indeed, if any breadth of construction is permitted, it may go to the fullest extent, and our whole government be changed from a Federal system to a consolidated one, and, in time, become a despotism.

The true and fair construction of this expression, both in the original and existing Federal compacts, appears to the committee too obvious to be mistaken. In both the Congress is authorized to provide money for the common defence and general welfare. In both is subjoined to this authority an enumeration of the cases to which their powers shall extend. Money cannot be applied to the general welfare otherwise than by an application of it to some particular measure conducive to the general welfare. Whenever, therefore, money has been raised by the general authority, and is to be applied to a particular measure, a question arises whether the particular measure be within the enumerated authorities vested in Congress. If it be, the money requisite for it may be applied to it. If it be not, no such application can be made. This fair and obvious interpretation coincides with, and is enforced by, the clause in the Constitution which declares that "no money shall be drawn from the treasury but in consequence of appropriations made by law." An appropriation of money to the general welfare would be deemed rather a mockery than an observance of this constitutional injunction.

The resolution next in order is contained in the following terms:—

"That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution, in the two late cases of the 'Alien and Sedition Acts,' passed at the last session of Congress; the first of which exercises a power nowhere delegated to the Federal Government; and which, by uniting legislative and judicial powers to those of the Executive, subverts the general principles of free government, as well as the particular organization and positive provisions of the Federal Constitution; and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto—a power which, more than any other, ought to produce universal alarm, because it is leveled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right."

Mr. Madison repeated the already familiar arguments against the Alien and Sedition acts. His arguments against the Sedition Act largely consisted of a reply to the doctrine advanced in its behalf that "the common or unwritten law"—which Madison characterized as "of vast extent and complexity, embracing almost every possible subject of legislation, both civil and criminal"—forms a part of Federal law.

In the state prior to the Revolution it is certain that the common law made a part of the colonial codes. But it was not the same in any two of the colonies; in some the modifications were materially and extensively different. There was no common legislature by which a common will could be expressed in the form of a law; nor any common magistracy by which such a law could be carried into practice. The will of each colony, alone and separately, had its organs for these purposes.

This stage of our political history furnishes no foothold for the patrons of this new doctrine.

Did, then, the principle or operation of the great event which made the colonies independent States imply or introduce the common law as a law of the Union?

The fundamental principle of the Revolution was that the colonies were coördinate members with each other, and with Great Britain, of an empire united by a common executive sovereign, but not united by any common legislative sovereign. The legislative power was maintained to be as complete in each American Parliament as in the British Parliament. The assertion by Great Britain of a power to make laws for the other

members of the empire, in all cases whatsoever, ended in the discovery that she had a right to make laws for them in no cases whatsoever.

Such being the ground of our Revolution, no support or color can be drawn from it for the doctrine that the common law is binding on these States as one society. The doctrine, on the contrary, is evidently repugnant to the fundamental principles of the Revolution.

The Articles of Confederation are the next source of information on this subject.

This instrument does not contain a sentence or a syllable that can be tortured into a countenance of the idea that the parties to it were, with respect to the objects of the common law, to form one community. No such law is named, or implied, or alluded to as being in force, or as brought into force by that compact. No provision is made by which such a law could be carried into operation; while, on the other hand, every such inference or pretext is absolutely precluded by Art. 2, which declares "that each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled."

Is this exclusion revoked and the common law introduced as national law by the present Constitution of the United States?

The only part of the Constitution which seems to have been relied on in this case is the 2d section of Art. 3: "The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

It has been asked what cases, distinct from those arising under the laws and treaties of the United States, can arise under the Constitution other than those arising under the common law, and it is inferred that the common law is, accordingly, adopted or recognized by the Constitution.

The expression "cases in law and equity" is manifestly confined to cases of a civil nature, and would exclude cases of criminal jurisdiction. Criminal cases in law and equity would be a language unknown to the law.

The succeeding paragraph in the same section is in harmony with this construction. It is in these words: "In all cases affecting ambassadors, or other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. *In all* the other cases [including cases of law and equity arising under the Constitution] the

Supreme Court shall have *appellate* jurisdiction, both as to law and *fact.*

Once more: The amendment last added to the Constitution [XIth] deserves attention as throwing light on this subject. "The judicial power of the United States shall not be construed to extend to any suit in *law* or *equity* commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign power." As it will not be pretended that any criminal proceeding could take place against a State the terms *law or equity* must be understood as appropriate to *civil,* in exclusion of *criminal* cases.

From these considerations it is evident that this part of the Constitution, even if it could be applied at all to the purpose for which it has been cited, would not include any cases whatever of a criminal nature, and, consequently, would not authorize the inference from it that the judicial authority extends to *offences* against the common law as offences arising under the Constitution.

It is further to be considered that, even if this part of the Constitution could be strained into an application to every common-law case, criminal as well as civil, it could have no effect in justifying the Sedition Act, which is an act of legislative and not of judicial power; and it is the judicial power only of which the extent is defined in this part of the Constitution.

There are two passages in the Constitution in which a description of the law of the United States is found. The first is contained in Art. 3, Sect. 3. The second is contained in the second paragraph of Art. 6. The common law is not expressed in the enumeration of either passage.

In aid of these objections the difficulties and confusion inseparable from a constructive introduction of the common law would afford powerful reasons against it.

Is it to be the common law with or without the British statutes?

Is the law to be different in every State, as differently modified by its code; or are the modifications of any particular State to be applied to all?

Questions of this sort might be multiplied with as much ease as there would be difficulty in answering them.

These consequences, flowing from the proposed construction, furnish other objections equally conclusive.

If it be understood that the common law is established by the Constitution, it follows that no part of the law can be altered

by the legislature. Such of the statutes already passed as may be repugnant thereto would be nullified; particularly the Sedition Act itself, which boasts of being a melioration of the common law; and the whole code, with all its incongruities, barbarisms and bloody maxims, would be inviolably saddled on the good people of the United States.

Should this consequence be rejected, and the common law be held, like other laws, liable to revision and alteration by the authority of Congress, it then follows that the authority of Congress is coextensive with the objects of common law; that is to say, with every object of legislation; for to every such object does some branch or other of the common law extend. The authority of Congress would, therefore, be no longer under the limitations marked out in the Constitution. They would be authorized to legislate in all cases whatsoever.

In the next place, as the President possesses the executive powers of the Constitution, and is to see that the laws be faithfully executed, his authority also must be coextensive with every branch of the common law. The additions which this would make to his power, though not readily to be estimated, claim the most serious attention.

This is not all: it will merit the most profound consideration how far an indefinite admission of the common law, with a latitude in construing it equal to the construction by which it is deduced from the Constitution, might draw after it the various prerogatives, making part of the unwritten law of England. The English constitution itself is nothing more than a composition of unwritten laws and maxims.

In the third place, whether the common law be admitted as of legal or of constitutional obligation, it would confer on the judicial department a discretion little short of a legislative power. It would remain with the same department to decide what parts of the common law would, and what would not, be properly applicable to the circumstances of the United States.

In the last place, the consequence of admitting the common law as the law of the United States, on the authority of the individual States, is as obvious as it would be fatal. As this law relates to every subject of legislation and would be paramount to the constitutions and laws of the States, the admission of it would overwhelm the residuary sovereignty of the States, and, by one constructive operation, new-model the whole political fabric of the country.

It is, indeed, distressing to reflect that it ever should have been made a question whether the Constitution, on the whole

face of which is seen so much labor to enumerate and define the several objects of Federal power, could intend to introduce in the lump, in an indirect manner, and by a forced construction of a few phrases, the vast and multifarious jurisdiction involved in the common law—a law filling so many ample volumes; a law overspreading the entire field of legislation; and a law that would sap the foundation of the Constitution as a system of limited and specified powers.

Mr. Madison continued:

Is, then, the Federal Government, it will be asked, destitute of every authority for restraining the licentiousness of the press, and for shielding itself against the libelous attacks which may be made on those who administer it?

The Constitution alone can answer this question. If no such power be expressly delegated, and if it be not both necessary and proper to carry into execution an express power; above all, if it be expressly forbidden, by a declaratory amendment to the Constitution—the answer must be, that the Federal Government is destitute of all such authority, this being left to the States.

The resolution *next* in order is as follows:—

"That this State having, by its convention, which ratified the Federal Constitution, expressly declared that, among other essential rights, 'the liberty of conscience and of the press cannot be canceled, abridged, restrained, or modified, by any authority of the United States'; and, from its extreme anxiety to guard these rights from every possible attack of sophistry and ambition, having, with other states, recommended an amendment for that purpose, which amendment was in due time annexed to the Constitution, it would mark a reproachful inconsistency, and criminal degeneracy, if an indifference were now shown to the most palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other."

Similar recommendations having proceeded from a number of other States, and Congress having, in consequence thereof, and with a view to extend the ground of public confidence, proposed, among other declaratory and restrictive clauses, a clause expressly securing the liberty of conscience and of the press; and Virginia, having concurred in the ratifications which made them a part of the Constitution, it will remain with a candid public to decide whether it would not mark an inconsistency and degeneracy if an indifference were now shown to a palpable violation of one of those rights—the freedom of the press; and to a precedent therein which may be fatal to the other—that free exercise of religion.

The two concluding resolutions only remain to be examined. They are in the words following:—

"That the good people of this commonwealth, having ever felt, and continuing to feel, the most sincere affection for their brethren of the other States, the truest anxiety for establishing and perpetuating the union of all, and the most scrupulous fidelity to that Constitution which is the pledge of mutual friendship and the instrument of mutual happiness,—the General Assembly doth solemnly appeal to the like dispositions in the other States, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken, by each, for coöperating with this State, in maintaining, unimpaired, the authorities, rights, and liberties reserved to the States respectively, or to the people.

"That the Governor be desired to transmit a copy of the foregoing resolutions to the executive authority of each of the other States, with a request that the same may be communicated to the legislature thereof; and that a copy be furnished to each of the Senators and Representatives representing this State in the Congress of the United States."

It has been said that it belongs to the judiciary of the United States, and not the State legislatures, to declare the meaning of the Federal Constitution.

But a declaration that proceedings of the Federal Government are not warranted by the Constitution is a novelty neither among the citizens nor among the legislatures of the States.

Nor can the declarations of either be deemed an assumption of the office of the judge. They are expressions of opinion, unaccompanied with any other effect than what they may produce on opinion, by exciting reflection. The expositions of the judiciary, on the other hand, are carried into immediate effect by force. The former may lead to a change in the legislative expression of the general will—possibly to a change in the opinion of the judiciary; the latter enforces the general will, while that will and that opinion continue unchanged.

And, if there be no impropriety in declaring the unconstitutionality of proceedings in the Federal Government, where can there be the impropriety of communicating the declaration to other States and inviting their concurrence in a like declaration? The legislatures of the States have a right to originate amendments to the Constitution by a concurrence of two-thirds of the whole number in applications to Congress for the purpose.

In respect to the Alien and Sedition Laws the legislatures of the States might have made a direct repre-

sentation to Congress, with a view to obtain a rescinding of the two offensive acts, or they might have represented to their respective Senators in Congress their wish that two-thirds thereof would propose an explanatory amendment to the Constitution, or two-thirds of themselves, if such had been their opinion, might, by an application to Congress, have obtained a convention for the same object.

The extensive view of the subject, thus taken by the committee, has led them to report to the House, as *the result of the whole,* the following resolution:

Resolved, That the General Assembly, having carefully and respectfully attended to the proceedings of a number of the States, *in answer to the resolutions of December 21, 1798, and having accurately and fully reëxamined and reconsidered the latter, find it to be their indispensable duty* to adhere to the same, as founded in truth, as consonant with the Constitution, and as conducive to its preservation; and more especially to be their duty to renew, as they do hereby renew, their PROTEST against Alien and Sedition Acts, as palpable and alarming infractions of the Constitution.

Specific Purpose of Jefferson and Madison

The uniform and emphatic repudiation by the other States of the resolutions of Kentucky and Virginia effectually disposed of the primary purpose of Jefferson and Madison in inspiring them, namely, the calling of a national convention of the States, which should, by a three-fourths vote, as provided by the Constitution, pass an amendment to that instrument enabling three-fourths of the States to declare void any action whatsoever of the Federal Government, whether this be a law passed by Congress, an order of the Executive Department, or a ruling of the Supreme Court.

To Jefferson and Madison it seemed that the Federal Government was preparing to seize supreme control over the States, such as Parliament exercised over Great Britain. The Alien and Sedition Laws of Congress were similar to those passed by Parliament in 1792-3, and the principle involved in them might be extended to making the Federal Government, like Parliament, the final judge of its own powers. Even a convention

of the States to change the Constitution might be prohibited as seditious, and therefore it was well to sound the States in time upon calling such a convention.

While Jefferson and Madison failed in their specific purpose to persuade the States to call a national convention to amend the Constitution in the way which has been indicated they succeeded beyond their greatest expectation in their general purpose, which was to induce the Federalists to "show their hand" and to sound an alarm to the people of the States based upon this revelation. They thus laid the foundation of a "campaign of education" which resulted in the accession of the Republican party to national power and its uninterrupted retention of this for a quarter of a century.

Resolutions expressive of sentiments similar to those of the Kentucky and Virginia resolutions were passed by various States in later years. Professor Johnston notes, as instances of the revenges of time that, in the reversal of political control in the State governments, Pennsylvania and Massachusetts passed resolutions of this character and that Virginia replied in emphatic repudiation of their sentiments.

The denial by Jefferson and Madison, in the resolutions, that the Federal courts had a common-law jurisdiction in criminal matters is, probably, best replied to by Associate-Justice Joseph Story in his "Commentaries on the Constitution."

The Common Law Jurisdiction of the Federal Courts

Justice Joseph Story

The question, whether the common law is applicable to the United States in their national character, relations, and government, has been much discussed at different periods of the government, principally, however, with reference to the jurisdiction and punishment of common law offences by the courts of the United States. It would be a most extraordinary state of things that the common law should be the basis of the jurisprudence of the States originally composing the Union; and yet a government engrafted upon the existing systems should

have no jurisprudence at all. If such be the result, there is no guide and no rule for the courts of the United States or indeed for any other department of government in the exercise of any of the powers confided to them, except so far as Congress has laid, or shall lay down, a rule. In the immense mass of rights and duties of contracts and claims, growing out of the Constitution and laws of the United States (upon which positive legislation has hitherto done little or nothing), what is the rule of decision, and interpretation, and restriction? Suppose the simplest case of contract with the Government of the United States, how is it to be construed? How is it to be enforced? What are its obligations? Take an act of Congress—how is it to be interpreted? Are the rules of the common law to furnish the proper guide, or is every court and department to give it any interpretation it may please, according to its own arbitrary will? My design is not here to discuss the subject (for that would require a volume), but rather to suggest some of the difficulties attendant upon the subject. Those readers who are desirous of more ample information are referred to Duponceau on the "Jurisdiction of the Courts of the United States"; to Tucker's Black. Comm. App. Note E, p. 372; to 1 Kent's Comm. Lect. 16, pp. 311 to 322; to the report of the Virginia legislature of 1799-1800; to Rawn on the Constitution, ch. 30, p. 258; to the *North American Review,* July, 1825; and to Mr. Bayard's speech in the "Debates on the Judiciary" in 1802, p. 372, etc.

As has been noted the controversy over the Alien and Sedition Laws was chiefly instrumental in the election of Thomas Jefferson to the Presidency. In his inaugural address (March 4, 1801) he thus announced the principles upon which he would conduct his Administration:

The Road to Liberty

First Inaugural Address of President Jefferson

About to enter, fellow citizens, on the exercise of duties which comprehend everything dear and valuable to you, it is proper you should understand what I deem the essential principles of our Government, and consequently those which ought to shape its administration. I will compress them within the narrowest compass they will bear, stating the general principle,

but not all its limitations. Equal and exact justice to all men, of whatever State or persuasion, religious or political; peace, commerce, and honest friendship with all nations, entangling alliances with none; the support of the State governments in all their rights, as the most competent administrations for our domestic concerns, and the surest bulwarks against anti-republican tendencies; the preservation of the general Government in its whole constitutional vigor, as the sheet anchor of our peace at home and safety abroad; a zealous care of the right of election by the people; a mild and safe corrective of abuses, which are lopped by the sword of revolution where peaceable remedies are unprovided; absolute acquiescence in the decisions of the majority, the vital principle of republics, from which is no appeal but to force, the vital principle and immediate parent of despotism; a well-disciplined militia, our best reliance in peace, and for the first moments of war, till regulars may relieve them; the supremacy of the civil over the military authority; economy in the public expense, that labor may be lightly burdened; the honest payment of our debts, and sacred preservation of the public faith; encouragement of agriculture, and of commerce as its handmaid; the diffusion of information, and arraignment of all abuses at the bar of public reason; freedom of religion; freedom of the press; and freedom of person, under the protection of the habeas corpus; and trial by juries impartially selected. These principles form the bright constellation which has gone before us, and guided our steps through an age of revolution and reformation. The wisdom of our sages and blood of our heroes have been devoted to their attainment; they should be the creed of our political faith; the text of civil instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or alarm, let us hasten to retrace our steps, and to regain the road which alone leads to peace, liberty, and safety.

CHAPTER V

Protection of Adopted Citizens

[THE KOSZTA AFFAIR]

President Pierce, in His Annual Message, Recounts the Facts of the Koszta Affair—Correspondence on the Affair between Baron Hülsemann, Austrian *Chargé d'Affaires,* and William L. Marcy, American Secretary of State—Resolutions of Thanks to Captain Duncan L. Ingraham, Who Secured the Release of Koszta, Are Passed in the House of Representatives—Debate on the Resolutions: John Perkins, Jr. [La.], on the Right of Expatriation; Tilt between Gilbert Dean [N. Y.] and John S. Millson [Va.] on the Duty vs. the Right to Protect Koszta; David T. Disney [O.] on the Distinction between Domiciliation and Allegiance.

THE Federalist policies in regard to immigrants and alien citizens were broached again in the Hartford convention of 1814 [see Vol. V, chapter I], but with this exception there was no important discussion in America concerning civil rights, unless the subject of slavery be considered in this connection, for the first half of the nineteenth century. The traditional liberal policy toward immigrants, which prevailed in the nearly continuous succession of Republican-Democratic administrations during this period, and the desire of every statesman, Northern, Southern, Eastern, or Western, to invite settlement and development of his section, and so to increase its power in Federal politics, placed the prospective citizen in a most advantageous position. With each party bidding for his vote the requirements for the elective franchise were reduced to a minimum. Consequently the right or privilege—whichever it be considered—was greatly abused, especially by European expatriates (usually revolutionists) who desired to continue their business abroad under the protection of some nation powerful enough

to resist the claims upon them of their former government. Accordingly they visited the United States, made application for citizenship, and returned to Europe trusting in the advantages of their new allegiance and careless of the performance of its duties.

In the annual message of President Franklin Pierce, December 6, 1853, appeared the following statement:

Martin Koszta, a Hungarian by birth, came to this country in 1850, and declared his intention, in due form of law, to become a citizen of the United States. After remaining here nearly two years, he visited Turkey. While at Smyrna, he was forcibly seized, taken on board an Austrian brig-of-war, then lying in the harbor of that place, and there confined in irons, with the avowed design to take him into the dominions of Austria. Our consul at Smyrna and legation at Constantinople interposed for his release, but their efforts were ineffectual. While thus imprisoned, Commander Duncan N. Ingraham, with the United States ship of war *St. Louis,* arrived at Smyrna, and, after inquiring into the circumstances of the case, came to the conclusion that Koszta was entitled to the protection of this Government, and took energetic and prompt measures for his release.[1] Under an arrangement between the agents of the United States and of Austria, he was transferred to the custody of the French consul-general at Smyrna, there to remain until he should be disposed of by the mutual agreement of the consuls of the respective governments at that place. Pursuant to that agreement he has been released, and is now in the United States. The Emperor of Austria has made the conduct of our officers who took part in this transaction a subject of grave complaint. Regarding Koszta as still his subject, and claiming a right to seize him within the limits of the Turkish Empire, he has demanded of this Government its consent to the surrender of the prisoner, a disavowal of the acts of its agents, and satisfaction for the alleged outrage. After a careful consideration of the case, I came to the conclusion that Koszta was seized without legal authority at Smyrna; that he was wrongfully detained on board of the Austrian brig-of-war; that, at the time of his seizure, he was clothed with the nationality of the United States; and that the acts of our officers, under the circumstances of the case, were justifiable, and their conduct has been fully approved by me, and a compliance with the several demands of the Emperor of Austria has been declined.

[1] July 2, 1853.

For a more full account of this transaction and my views in regard to it, I refer to the correspondence between the *Chargé d'Affaires* of Austria and the Secretary of State, which is herewith transmitted. The principles and policy, therein maintained on the part of the United States, will, whenever a proper occasion occurs, be applied and enforced.

The chief letters in the correspondence referred to were one from Baron Hülsemann, Austrian *Chargé d'Affaires*, to William L. Marcy, American Secretary of State, written on August 29, 1853, and the Secretary's reply of September 26. Hülsemann asked that the United States "disavow the conduct of its agents . . . hasten to call them to a severe account, and tender to Austria a satisfaction proportionate to the outrage." Marcy's answer defended the position of the United States throughout on the grounds that Koszta had ceased to be a citizen of Austria even by the law of Austria; that when seized and imprisoned he was already invested with the nationality of the United States, and this government had therefore the right, if it chose to exercise it, to extend its protection to him; that from international law Austria could derive no authority to obstruct or interfere with the United States in the exercise of this right in effecting the liberation of Koszta, and that Captain Ingraham's interposition for his release was, under the extraordinary circumstances of the case, right and proper.

The position taken by Secretary Marcy has since been accepted by the authorities in international law.

The ringing letter of the Secretary met with universal approbation from the American people, and contributed materially toward strengthening the President, for Pierce had been harshly criticized by the "Hards," a faction of New York Democrats who coöperated with the South, for appointing to the chief office in his cabinet a man who belonged to the opposite faction, known as the "Softs," who were prone to make political dickers with the Free Soilers. Captain Ingraham became a popular hero for his prompt and decisive action in the Koszta affair, and resolutions of thanks to him were

EXECUTIVE MA[E]RCY AND THE BAMBERS

[Surrender of Irishmen to the British Consul]

From the collection of the New York Historical Society

passed in the House of Representatives on January 11, 1854, by a vote of 174 to 9. In remarks upon the resolutions the points in international law which had been raised in the Hülsemann-Marcy correspondence were ably discussed by John Perkins, Jr. [La.], Gilbert Dean [N. Y.], John S. Millson [Va.], and David T. Disney, [Ohio].

The Koszta Affair

House of Representatives, January 11, 1854

Mr. Perkins.—Although I approve the doctrines contained in the letter of the Secretary of State, I do not admit that the letter itself embodies any new principle. The secretary himself protests against this idea.

He says, speaking of nationality resulting from domicile:

> "It is no new doctrine now for the first time brought into operation by the United States; it is common to all nations, and has had the sanction of their practice for ages; but it is new that, at this late period, when the United States assert a claim to it as a common inheritance, it should at once be discovered that it is a doctrine fraught with danger, and likely to compromit the peace of the world."

The merit of the secretary's letter is, however, greater to my mind than if its doctrines were novel. I think it no light thing that he has brought forward, in a bold and forcible manner, on a highly proper occasion, a great principle of international law that has been suffered to lie long dormant in our law books. As early as 1817, in the case of Pizarro, 2d Wheaton, this doctrine of nationality, resulting from domicile, was laid down in broad terms by Judge Story, and concurred in by Judges Marshall, Washington, Livingston, and Johnston. *Secretary Marcy has only given to it vitality by its application to persons as well as property.* There is no just reason for its being restricted, so as to apply to one and not to the other.

The principle is broad enough for both, and that it has not always been extended to protect both is attributable to the watchful jealousy with which the monarchical governments of Europe have sought to *make perpetual the allegiance of the subject.* Recognizing, as we do in this country, the opposite doctrine—*the right of an individual to expatriate himself*—the reasoning of the secretary, and the conclusions of his letter, are in harmony with the spirit of our institutions.

I think we have acquiesced long enough in European inter-

pretation of the law of nations. For the last fifty years it has been molded to suit the necessities of particular nations. At this time it is practically little more than a code, conventional in its character, for the protection of existing institutions—interpreted always against the individual, and in favor of the government.

Sir, the time is coming when this country will be forced to declare, in some degree, its independence of a code which is framed to justify tyranny in almost all its forms, and which is too often made a screen for the perpetration of great national crime. When we do declare our independence of the perversions of this code, I believe the act will be attended with moral results almost equal to those which attended the establishment of our colonial independence.

Mr. Dean.—I desire, as one of the Committee on Foreign Affairs—to which this subject was referred—and as a member of this House, to say here in my place, distinctly and unequivocally, that the object of this testimonial is not merely a personal compliment to Captain Ingraham, highly as he deserves it; that compliment he has received by the united voice of the civilized world, by the unanimous declaration of the press of this country and the liberal press of Europe; but hero worship is no part of our duty; we are to legislate and to affirm principles. If we pass these resolutions, as I trust we shall, while we thank the gallant captain, we declare, as the representatives of the American people, that we approve the act in the light of all its surrounding circumstances, and affirm those great principles of natural and international law on which only it is to be justified. We do more, we throw a light into the darkened firmament of Europe, blazing a meteor for an hour, and shining a fixed star forever.

I must dissent from the remark which has been made during the debate—that Congress is not the place to enunciate principles. So thought not the signers of the Declaration of Independence; but they, "in Congress assembled," proclaimed their principles and to their maintenance pledged fortune, life, and honor; and we, by adopting the proposition now before us, will announce and affirm a principle of vital importance.

I will now state what I understand by these resolutions:

I understand the first resolution—and that is the one which contains the whole declaration of principles—to contain three distinct propositions. The first is the right of an individual to expatriate himself, to choose his own place of residence, irrespective of the accident of birth, and a distinct denial of the

right of a prince to track his subject into foreign countries, and there claim jurisdiction over him. The assertion that the seizure of Koszta was "*illegal*" is a direct and positive enunciation of this principle. The second proposition is the right of this Government to afford protection to such persons as choose to come here and adopt this country as their place of residence. The third proposition is the approval by Congress of the act of Captain Ingraham, and the act of our Government in sustaining him. If there is any man in the House who is not prepared to take this new step, who is not now ready to assume this position, I trust that he will vote against the resolutions. I believe the time has come when we should, and when we must, concur in these principles. The executive branch of the Government has already done so in the letter of Secretary Marcy, which has so often been referred to—a letter which, let me say, is destined to an immortality almost equal to Magna Charta or the Declaration of Independence, if it is not sacrilege to compare anything to the Declaration of Independence. This letter, sir, is another Magna Charta—one that has long been needed—an American Magna Charta for adopted citizens.

Mr. Millson.—It seems to me that the friends of this resolution unnecessarily create prejudice against it, by attributing to the letter of the Secretary of State a position which he never meant to assume. My friend from New York has just told us that the position taken by the Secretary of State in his letter was one novel and hitherto unknown in international history. Now, I wish very briefly to call his attention to a paragraph in that letter, in which I think he will discover that the secretary did not regard his position as at all novel or unknown.

"The vindication of these agents is not placed upon any principle new to the international code, or unknown in the practice of enlightened nations. These nations do not hesitate, in the exercise of the right of protection, to extend it to persons (not always subjects according to their municipal laws) who are clothed with their nationality; and in some instances they have carried this right of protection to limits which this Government would not venture, because it would not feel justified, to approach; nor have any of these nations been disposed to abandon the exercise of this right from a timid apprehension that it might possibly bring them into an occasional collision with other powers."

Mr. Marcy never said that the Government of the United States were *bound* to protect Martin Kozsta, but in twenty instances he has said that they had the *right* to protect him; and in saying this he expressly says that he asserts a principle not new to the international code. And the whole experience of

the present day justifies him in saying it. At this very moment it is a question under considerations by England and France whether they shall not interpose, in the exercise of their sovereign discretion, for the protection of the Sultan of Turkey. Yet no gentleman will pretend that the Sultan is a citizen of either power, or that there is any obligation resting upon them, except in their own discretion, to afford him any such protection.

MR. PARKER.—The secretary says:

"This right to protect persons having a domicile, though not native-born or naturalized citizens, rests on the firm foundation of justice, and the claim to be protected is earned by considerations which the protecting power is not at liberty to disregard."

I think this is conclusive upon this point.

MR. DEAN.—I had the letter of the secretary open, and was about to read that precise sentence in reply to the remarks of my friend from Virginia. But he misappehends me or the secretary. I was speaking of the doctrine of allegiance, or subjection as it exists in Europe, as contradistinguished from our laws on that subject, and Secretary Marcy, in the passage which the gentleman has cited, was commenting upon an entirely different subject—the right exercised by all civilized nations to extend protection to those whom they do not regard as subjects or citizens, but who, for commercial purposes or otherwise, have been invested with their nationality.

The Austrian Chargé d'Affaires on this subject says:

"In our opinion, Koszta has never ceased to be an Austrian subject. Everything combines to make the Imperial Government persist in this estimate of the matter. The laws of his country are opposed to Koszta's breaking asunder of his own accord, and without having obtained permission to expatriate himself from the authorities of that country, the ties of nationality which bind him to it."

The American Secretary of State, in reply to this assertion, answers:

"There are great diversity and much confusion of opinion as to the nature and obligations of allegiance. By some it is held to be an indestructible political tie, and though resulting from the mere accident of birth, yet forever binding the subject to the sovereign; by others it is considered a political connection in the nature of a civil contract, dissoluble by mutual consent, but not so at the option of either party. The sounder and more prevalent doctrine, however, is that the citizen or subject, having faithfully performed the past and present duties resulting from his relation to the sovereign power, may at any time release himself

from the obligation of allegiance, freely quit the land of his birth or adoption, seek through all countries a home, and select anywhere that which offers him the fairest prospect of happiness for himself and his posterity.''

Here, then, is a distinct issue between the two governments on this question. Captain Ingraham carried out the American doctrine, and we, by approving his conduct, affirm this principle and indorse the action of the Government in sustaining him.

But we are told that, though this Government may have the right, it is not its duty to protect persons standing in the same relation which Koszta occupied. This cannot be, for allegiance and protection are reciprocal—the former proceeds from the latter; and the American law upon this subject is most beautifully and forcibly stated in the following extract from the secretary's letter:

''Whenever, by the operation of the law of nations, an individual becomes clothed with our national character, be he a native born or naturalized citizen, an exile driven from his early home by political oppression, or an emigrant enticed from it by the hopes of a better fortune for himself and his posterity, he can claim the protection of this government, and it may respond to that claim without being obliged to explain its conduct to any foreign power; for it is its duty to make its nationality respected by other nations, and respectable in every quarter of the globe.''

My colleague from New York [Mr. Maurice] refers me to another portion of the letter, in which the secretary asserts that Koszta, on the ground of domicile, had a right to ask, and that, on that ground, it was the *duty* of the Government to afford, protection as long as his character of a domiciliated resident continued. In this he is clearly right, and sustained by both reason and authority.

When gentlemen say that the act of Ingraham is one of doubtful propriety, I tell them that upon that point the Administration take issue with them, and for the verdict appeal to the country. That there may be no misapprehension, and that no one may vote for this resolution ignorant of the facts, what did Captain Ingraham do? And here let me pause to say a word in reply to the objection raised by the gentleman from Tennessee [Mr. Jones]. The gentleman wants to know why we do not tender this vote of thanks to Mr. Brown, the American consul, instead of to Captain Ingraham? If the gentleman will look at the letter of Mr. Hülsemann, he will see that Mr. Brown directed, or rather advised, Captain Ingraham to demand the release of Koszta. Well, he did demand his release, but what

use would it have been if he had stopped there? The letter of his instructions beyond this was silent. But Captain Ingraham, having demanded the release of Koszta, went further, took the means necessary to make that demand effectual, and told the representative of the Austrian Government—the commander of the *Hussar*—on the morning of the 2d July, that unless the man was delivered up by four o'clock in the afternoon he would take him by force. It was his gallant, prompt, and judicious conduct in going further that awards the great merit to Captain Ingraham, and which has invested his name and the flag he bore with such peculiar glory.

Mr. Hülsemann says that he then drew his ship up in line of battle, and prepared to carry out his threat. I will say, further, that the captain of the Austrian brig waited until within ten minutes of four o'clock before he undertook to release his prisoner. Koszta was in the hold of his vessel, and in irons. At that time, having made previous threats of shooting him, they sent down for him. He was afraid that they were taking him to be shot, for he had been told in the morning that such would be his fate if the demand of Ingraham was persisted in. It was a sublime sight—one which has rarely been equaled in history—to see Captain Ingraham standing on the deck of his vessel, with her guns pointed, the torches lighted, and he awaiting, with watch in hand, to give the word of command to fire; the Austrian officers, however, just before the expiration of the time, said, hurriedly, to the prisoner, "We want you no longer here"; and he was delivered just three minutes before four o'clock.

The gentleman inquired the other day whether, if Koszta had not been given up, Ingraham would have been justified in firing into the Austrian vessel? I answer promptly that he would; and, if he had done it, the whole American people, and the laws of nations, would have sustained him. He was at that time the representative of our nation, and demanding the release of a man who claimed the protection of our Government, and who had in his possession papers which entitled him to that protection.

There is another ground upon which the American people will justify Captain Ingraham, and that is this: Our diplomatic representatives, whether properly or not, have been charged with remissness in asserting the rights of Americans traveling abroad. They have waited, and they have doubted. Ingraham, in this case, the moment he received the word from our agent that there was a man claiming the protection of the

American Government in imprisonment, did not send home to search the parish registers to know where he was born, nor trace out the branch of the genealogical tree from which he claimed to spring. He did not wait to examine the records of all the courts to see whether he had declared his intention to become a citizen—or to ascertain the genuineness of the papers he bore, or inquire into the power of the court to grant them. Is an American commander to do so in any case? On the contrary, when the right is claimed by one whom he is satisfied is entitled to it, he should get nine points of the law—that is, possession—leaving the question involved to be afterward settled between the two governments. That is the manner in which our representatives should act. And the conduct of Ingraham, acting as he has, promptly and successfully, upon these principles, has given us respect abroad, and dignity and consideration everywhere.

I was reading but yesterday an extract from a letter received from one of the officers of the *St. Louis,* which stated that when Captain Ingraham entered the harbor of Alexandria he was received amid the joyful ringing of bells and firing of cannon; and that when he entered the theater the American flag was flying, and he was received with cheers. Such tributes as these, sir, make an American proud of his country, and will have their effect in the army and navy. No single battle has ever added such luster to the American name. It has given us a respect abroad which could not be secured by the most successful naval engagement.

We are now to take our position in reference to the rights of our citizens abroad. And those who favor the passage of these resolutions mean to send word to all that it is the deliberate voice of the American Congress that the rights of an American citizen abroad shall be guarded as vigilantly as if he were upon our own soil; and, if necessary, that the whole force of the Government shall be invoked to afford him protection—that the deck of an American ship is sacred; and the spot on which a person entitled to the protection of our Government stands, whether at home or abroad, is as inviolable as the sanctuary of the gods.

Mr. Disney.—It has been remarked, as well in the Koszta letter as upon this floor, that the Secretary of State set forth on that occasion no new doctrine; that he only referred to principles known to the law of nations. To this I must give my dissent. I do not so read it. For the purposes of commerce, the laws of nations have recognized the fact that an individual

may acquire a domicile in a country alien to the one of his origin. They have recognized that, for *commercial* purposes, he may be clothed with the nationality of a country alien to the one to which he owes his allegiance; and the error of the secretary consists in this—he has confounded *political* with *commercial* law. That, while he finds the language which he uses running through the books upon the subject, yet he has omitted to notice and recognize the distinction of which I have spoken, that the nationality which is given by domicile is conferred for *commercial* purposes. This distinction is palpably and unmistakably laid down in the very authorities which the secretary himself cites; and in this nationality the individual must be limited to such acts as are not *incompatible* with his *allegiance.*

As the property of a country constitutes a part of its strength, so the legitimate right of a country in time of war is to weaken its enemy by the destruction and capture of its property; and the courts of England and France, as well as those of our own country, have held that in the execution of this right it is not to be permitted to an individual, under cover of a different nationality, though a resident of the country, to protect the property which is the product of the hostile soil.

The whole difficulty in this case has arisen from confounding political with commercial law—from confounding commercial relations with the right and duty of an individual, as a subject; and I use the word "subject" not in contradistinction to the term which we use in this country—that of "citizen"—but to designate the relations between the governed and the government. I am inquiring into the political relations of the individual under the government. The right and duty of an individual under a government, viewed in his political relations to that government, and the rights of that individual toward that government, in his commercial transactions, in regard to the property of the country in which he is a resident, are different and separate things. There are two sorts of allegiance. The books of this country and Europe recognize them with entire distinctness. The temporary allegiance growing out of a domicile, and connected with the commercial transactions of the country; the personal duty while within the jurisdiction; and the permanent allegiance growing out of the duties of the citizen in the abstract, without regard to his commercial relations and his connection with the property of the country, which reach beyond the jurisdiction of the country. Permanent allegiance imposes upon an individual the obligation

to support, defend, and obey the Government, whether at home or abroad. Temporary allegiance imposes upon the individual the necessity of obeying the laws of the country while he is within the jurisdiction of the country within which he is residing, within which he domiciliated, provided they are not incompatible with the obligations he owes to the country to which his permanent allegiance is due. This is a distinction which the Secretary of State has overlooked. It is an important one, vast and mighty in its consequences.

Take the case of Koszta to illustrate this: while he remained within the limits of the Republic, with an intention to remain permanently here, he owed temporary allegiance to the Government, and was entitled to protection within its *jurisdiction*. But if he had left these shores without the intention of returning, no sooner had he quitted the dock at New York than he would have been divested of all his obligations of temporary allegiance to this Government, and this Government would have been relieved from all obligations in respect to his protection. They were under obligations to protect him in his property and in his relations to his property, whether within or without the jurisdiction of the United States, but not to protect the individual, in his political relations, outside of the jurisdiction of the country, on account of any claim which he may have acquired in his political relations to the institutions of the country during his residence here.

But, sir, before we can decide whether Martin Koszta was entitled to any privileges even of domiciliation, we must first inquire into the intention of the party in leaving our shores—whether it was for temporary purposes merely. He left, as we understand, with the intention of returning to this country. What, then, was the position he occupied? To that question my reply is that he occupied precisely the position of a British subject residing—domiciliated—as a merchant in New York, who leaves the country and takes a voyage to France, to accomplish purposes connected with his business. Now, sir, while he is there, in the heart of France, he is an American merchant, but a British subject—with a temporary allegiance to the United States, but a permanent allegiance to Great Britain. Martin Koszta, in commercial matters, would have been as an American merchant who was temporarily in Smyrna; but though occupying such relations he *might* have been an Austrian subject beside. Such is the doctrine of the law. It was the right and duty of the United States to protect his property as an American merchant; but in his political relations, as soon

as he left our shores, he was absolved from all allegiance to this Government, and the Government at the same time was absolved from obligations to protect him while he remained without the jurisdiction of the country. As an individual, Koszta owed no allegiance to the American Government; and, as I before observed, when he left our shores the American Government was relieved from the correlative duty of affording him its protection. He stood in the attitude of an American citizen, so far as property was concerned; and as such the American Government was placed under obligations to protect him in his property. His right to such protection would have been recognized in any of the courts of Europe, or in any courts of our own country.

With regard to the policy of adopting the doctrine that an individual coming here without any assumption of allegiance creates a duty upon the part of this Government to extend to him its protection, the idea is utterly absurd; and if this Government attempts to defend such a position it will ere long be compelled to retract and retrace its steps. Our Government is but one among a community of nations.

The very authorities which the secretary has consulted, and whose language may be found in every page of this document, have laid down the doctrine for which I contend, and the limitations which he has entirely overlooked—that is, that the nationality of which he speaks is acquired for commercial purposes, and can impose no duty incompatible with allegiance.

In the case of the *Venus* (8 Cranch), the Supreme Court is remarkably explicit: "What are the consequences to which this acquired domicile may legally expose the person entitled to it, in the event of a war between the government under which he resides and that to which he owes a permanent allegiance?" is the question asked, and to this the court replies, that "to his native country he cannot be considered an enemy, in the strict sense of the word; yet he is *deemed such* with *reference* to the seizure of *so much of his property* concerned in the trade of the enemy as is *connected* with *his residence*. It is found adhering to the enemy. He is himself adhering to the enemy, although not criminally so, *unless* he engages in *acts of hostility* against his *native country*"; that is to say, against his permanent allegiance. Grotius is quoted to the same point—563. The domiciliated party, says the court, in the same case, "are bound by such residents to the society of which they are members, subject to the laws of the State, and owing a *qualified* allegiance thereto. They are obliged to de-

fend it, with an exception in favor of a subject in relation to his native country."

But Judge Marshall was unwilling to go even to the extent which the majority of the court assumed:

"I think [said he in the same case] I cannot be mistaken when I say that, in all the views taken of this subject by the most approved writers on the law of nations, the citizen of one country *residing* in another is not considered as *incorporated* in that other, but is still considered as belonging to that society of which he was originally a member."

"For *commercial* purposes [says the judge], the *merchant* is considered as a member of that society in which he has his domicile." "The policy of commercial nations receives foreign merchants into their bosom, and permits their own citizens to reside abroad for the purposes of trade, without *injury* to their *rights* or character as *citizens*." "Nor will they hastily construe such residence into a *change* of *national* character, to the injury of the individual."

I am asked if the repeal of the prohibitory clause in relation to aliens going abroad during their probation does not involve an obligation to protect them while they are abroad? To this I answer that I suppose that the repeal of that clause merely places an alien where he would have been if that clause had never been enacted. It goes only to his *capability* to become a citizen.

This country is now occupying a position among the nations of the earth vastly more important than what she has heretofore done. And proud as we are, and just in proportion as we are proud of the glory, and the honor, and the renown, and dignity, and the reputation of this Republic, we will be chary of putting the country in a position which may inflict hereafter a stain upon that reputation and renown. I say, for this Government, exalted as she is in character, and developed as she is in strength, to lay down doctrines from which, in the future, she will be compelled to recede would be a stain upon that character; and it is to avoid a position of the kind that I have felt myself called upon to direct the attention of the House and the country to the doctrines which have heretofore been entertained, not only by our own Government, but by every government in Europe.

CHAPTER VI

Nativism

[the know-nothing movement]

Rise of the "Know Nothing" Party—Debate in the House of Representatives on the Party and Its Principles: in Favor, Nathaniel P. Banks [Mass.]; Opposed, William S. Barry [Miss.].

SINCE Tammany Hall, the local Democratic organization of New York City, largely recruited its membership from immigrants, in conferring citizenship on these the officials in charge of naturalization in the city, being members of the Hall, winked at the grossest violations of the law. These abuses finally became so glaring that in 1835 a new party arose in opposition to them, which called itself the American Republican.

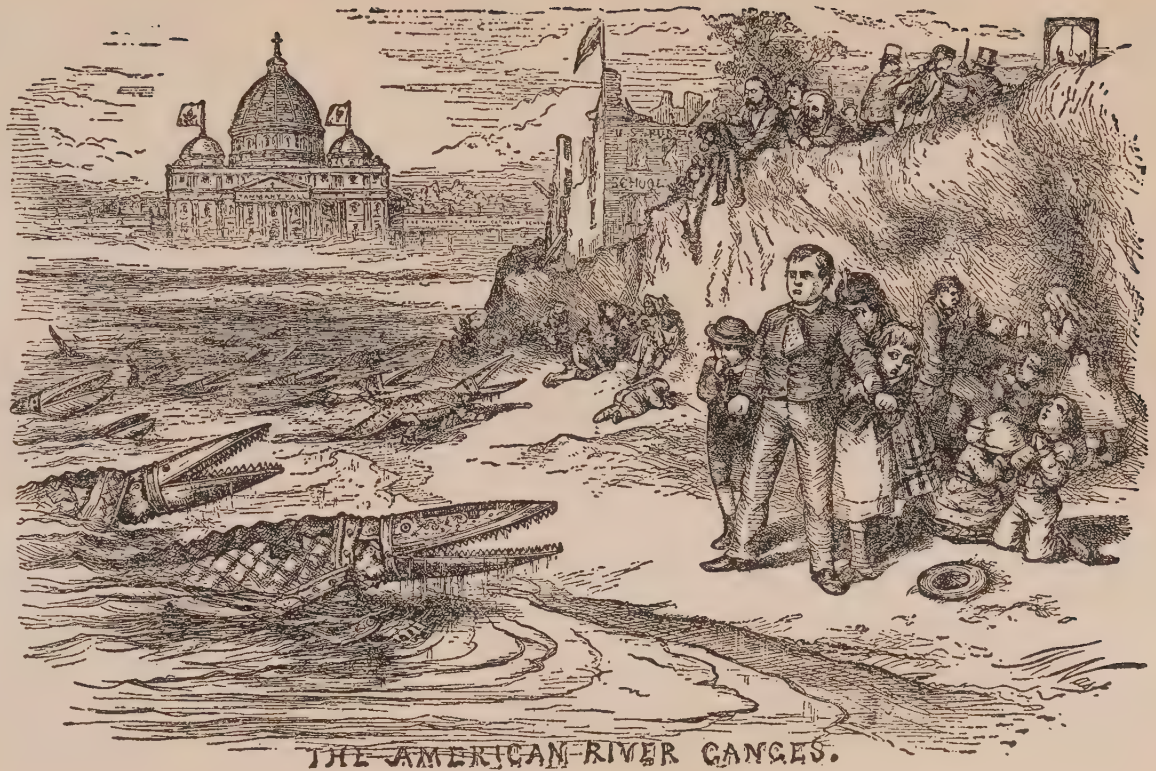
Its growth was rapid: in two years it elected the mayor of New York. The movement spread to Philadelphia, where the same abuses of the naturalization laws existed, and by 1844 it had secured six Congressmen from these two cities. Then it suddenly dwindled, and in the succeeding Congress, when it assumed the name of Native American, it had but one Representative (who came from Philadelphia). However, it revived again after the Presidential election of 1852, when the Whigs (who received few accessions from the foreign-born population) had become embittered by their overwhelming disaster and the prospect of still greater defeats at the hands of the swelling numbers of the Democracy, and were ready to form any new political combination which should cut off recruits from the dominant party.

By this time the organization had taken the form of

a secret fraternity. Its name was said to be "The Sons of 76," or "The Order of the Star-Spangled Banner," though its members were pledged by oath not to reveal its real name, and were instructed to reply to all inquiries concerning the same, "I don't know," whence arose the popular designation of the party as "Know-Nothing." Its purpose was apparent: the restriction, so far as possible, of American citizenship and political preferment to those persons born in this country, with especial exclusion of Roman Catholics. Its favorite countersign was an order which General Washington is reported (on uncertain authority) to have given on a critical occasion during the Revolution: "Put none but Americans on guard to-night."

On June 17, 1854, in the same year in which the Republican party was organized, the Know-Nothings formed a constitution under the name of the American party, the contents of which, though officially considered secret, soon transpired. This proscribed from office-holding not only all foreign-born persons, but also native Americans who were members of the Roman Catholic Church, to whose hierarchical tendencies and not its religious beliefs objection was made. Justification of this position was found in the facts that *Brownson's Review* and the *Freeman's Journal,* the leading Roman Catholic papers of the country, asserted the right of the Church to dictate and review the acts of public executives and representatives, and that dignitaries of the Church, such as Archbishop John Hughes of New York, demanded that Roman Catholic parochial schools be supported by the public funds. The controversy over public aid to the parochial schools continued to be a State issue (particularly in New York) for many years. Thomas Nast, the cartoonist, most vigorously attacked the "Roman Catholic hierarchy" for its opposition to the democratic principle of divorce of Church and State in the school question and other related issues.

The Roman Catholic bishops of New York also demanded that Church property be placed in their hands, although the constitution of the State required that all



Cartoon by Thomas Nast

religious bodies be incorporated and that their property be held by trustees. This demand was resisted by a number of Roman Catholic congregations, and Cardinal Bedini was sent over by the Pope in 1853 to settle the difficulty. Now this nuncio had aided in suppressing a revolution in Bologna, one of the patriots being executed. Accordingly he was stigmatized as "Ugo Bassi's executioner," and was insulted in a number of cities where he appeared in public. He decided in favor of the bishops in the controversy over Church property, and, when the trustees resisted the transfer, excommunicated these, whereupon they petitioned the State legislature, complaining that the penalty had been incurred because of their fidelity to the law. The legislature upheld the trustees, although eight years afterward the law was amended so that the bishops obtained a virtual victory.

In the State elections of 1854 the American party carried Massachusetts and Delaware and made a strong showing in New York. In the next year it gained the legislatures of New Hampshire, Rhode Island, Connecticut, New York, California, Kentucky, and Maryland, and was beaten only by small majorities in a number of Southern States. Encouraged by this success it prepared in the presidential campaign to oppose to the anti-slavery issue of the rival new party, the Republican, that of nativism, or opposition to foreign influence in American politics.

On February 21, 1856, in secret convention at Philadelphia, the American party adopted a platform containing the following principles:

"(3) Americans must rule America; and to this end native-born citizens should be selected for all State, Federal, and municipal offices. (9) A change in the laws of naturalization, making a continued residence of twenty-one years necessary for future citizenship. (12) The enforcement of 'all laws' until repealed or decided unconstitutional. (13) Opposition to Pierce's administration for its expulsion of 'Americans' from office and for its reopening sectional strife by repealing the Missouri Compromise."

On February 22 the convention nominated Millard Fillmore [N. Y.] for President and Andrew J. Donelson [Tenn.] for Vice-President. These nominations, though not the platform, were ratified by the Whig national convention held at Baltimore on September 17. The issue of the party, however, could not replace that of slavery in the minds of the people, and only Maryland cast its votes (eight in number) for the candidates. Thereafter the party speedily dwindled. In 1857-9 it had five Senators and from fifteen to twenty Representatives in Congress, and in 1859-61 two Senators and twenty-three Representatives, mostly from the border States. The Civil War completely killed the party, although its principles cropped out at times thereafter in minor political organizations such as the American Protective Association, known as the "A. P. A."

The new party formed the chief subject of discussion in the House of Representatives during the session of 1854-55. The debate was inaugurated with an attack on the party by William S. Barry [Miss.] on December 18, 1854, in a speech on "Civil and Religious Toleration." This was replied to on the same day by Nathaniel P. Banks [Mass.].

The Know-Nothing Party

House of Representatives, December 18, 1854

Mr. Barry.—This society, or association, known by the name of "Know-Nothings," is one which has recently sprung into existence. Its founders are unknown; its purposes are unknown, because the purposes avowed by those who are supposed to belong to it—by those advocating it—are contradictory in their character. These are to be deduced, not from authorized avowals of those acknowledged to belong to the society, but they are to be gathered by scraps, collected here and there from the declarations of those who are suspected of being members, or who have incidentally acquired information. It is not like other political organizations here, avowing principles, and meeting and daring the responsibility of the avowal. It is not like other associations, which having principles believed to be of vital importance to the country, their members are willing

to declare those principles, and to stand or fall with them. If, then, in attempting to find out the purposes of this order, I shall do injustice to it—if I shall ascribe to it that which its advocates deny, let members upon this floor, if there be such belonging to the order, rise and correct me. I shall be willing to be supplied with the information—more willing, perhaps, than they will be to give it.

This association appeals to that which is strong in every country. It appeals to that feeling of nationality without which a nation cannot exist as an independent government, but which, at the same time, when kindled and maddened, may destroy all that is good in government, and subvert the very principles on which it was established. There is no nation in the world in which this prejudice against foreigners cannot be aroused; but the most beautiful and soothing effect of civilization, the loveliest influence of our own institutions, has been to mollify this prejudice against those outside our borders, and to bring the whole family of nations, as it were, into a common brotherhood. According to the degree of a nation's civilization, you will find this prejudice and hostility to foreigners. In proportion as a nation is elevated in its consciousness of power, and in its knowledge of the high duties of civilization, will it receive and treat with respect those who spring from a foreign soil, or are reared under the influence of different ideas; as it sinks in the scale of self-respect and civilization, in the same degree do you find this prejudice; and as a nation is possessed of a rabble instead of a people, it will be seen that its fury can be aroused against all who cannot pronounce its shibboleth.

One of the most frequent justifications of this organization, Mr. Chairman, is that there are secret associations of foreigners which must be counteracted in this manner. If such political associations exist among the foreign population of this country, it certainly seems a strange method to rebuke the error by forming other associations, in which is embodied all that is wrong in those we condemn. We give dignity and consequence to their conduct by imitating it, and lose all the advantage of honest principles by leveling our own conduct to the standard of those we reprobate. If the foreigners have adopted rules of action incompatible either with social order or political rights, there can be no duty more consistent with pure philanthropy or elevated patriotism than the attempt to correct their error, and infuse into their minds juster views of the duties of the citizen, both to his neighbor and to the State. We have adopted the humane and tolerant opinion of Mr. Jefferson, the great apostle of the Democratic party, and who infused into it

that generous and trusting faith in man, whether native or alien born, which has been the germ of the chief differences between the two great parties of the country, "*That little is to be feared from error, while reason is left free to combat it.*" The evils that we see are not to be cured by persecution; the faggot and the stake are exploded arguments; and having discarded the more open, manly, and responsible instruments of torture, we will not now turn to seize upon those which are secret, sinister, and irresponsible.

Secret political associations have heretofore existed in oppressed countries, for enlarging the rights of the citizens, and limiting the powers of rulers; but this is the first, so far as my reading extends, in which the effort has been made, through such an organization, to narrow the liberty of man, and graft an oppressive principle upon the government. There has been a strong repugnance to these political associations in this country from the earliest period of our history. The society of the Cincinnati, formed immediately after the Revolution, and composed of men fresh from the baptism of fire and blood in that holy struggle, has decayed, and almost expired, under the distrust felt by the American people of secret associations, which might be wielded to the detriment of the public liberty, or to serve the ambitious purposes of those who would make the association the instrument of their own advancement. The times are not so improved, nor men grown so patriotic, that a power which was denied by public opinion to the best patriots of the purest days of the Revolution can safely be intrusted to the hands of those who can show no peculiar claim, either of service or purity, to special confidence.

Mr. Chairman, two distinct questions are presented in examining this subject—first, the purposes which the order has in view; and, secondly, the means by which they are to be accomplished.

These purposes, as gathered from supposed members, from newspapers professing to advocate the views of the order, and from the writings and speeches of those affecting to sympathize with it, are—

First. The exclusion of all foreigners from office.

Second. The extension of the term of naturalization from five to twenty-one years, or some other period longer than five years.

Third. The entire repeal of the naturalization laws.

Fourthly. The exclusion of Roman Catholics from office.

The means by which these things are to be accomplished are

a secret political association, in which the members are bound by the most solemn oaths to obedience, to silence, and to mutual fidelity.

I shall speak, first, of the organization, and then of the purposes the order has in view.

I can but believe that a secret political association is dangerous to the rights of the people and to the stability of the Government. In a free government, where every man is entitled to declare his opinions, and there is no punishment for the avowal of whatever doctrines he may entertain, what excuse can there be for a resort to secrecy? When the people are oppressed by a tyrannical government, and the penalty of death awaits every man who dares to speak or think against the power that is crushing him, there may indeed be an excuse for patriots scheming in the darkness of midnight, and in the security of unknown places of meeting; but, in the midst of a people who enjoy every liberty that the most liberal institutions can bestow, where freedom of thought, of speech, of action, and of the press are the birthright of every man, how can a secret proscriptive organization be allowed to take root, and rights, the dearest that man can exercise, or government protect, be taken from the people by means so insidious and so fruitful of danger?

The Constitution allows no oaths to be forced upon the voter, nor tests to be imposed in the use of that franchise. The sense of duty and the personal stake of each man in the welfare of the community were thought sufficient to insure its faithful exercise. But this secret association attempts to bind men by the most stringent oaths to exercise the right of voting only as certain *native patriots* shall determine, in the secrecy, and perhaps in the darkness, of midnight. The citizen who assumes these oaths and obligations parts with his individual freedom, abandons his personal independence, and comes to the polls, not an untrammeled voter, but a mere machine to carry out, by his suffrage, the elections and the purposes which others—perhaps against his consent—have determined on. He barters away his freedom who makes any pledges or swears any oaths which impair his right to modify his ticket at any time prior to depositing it in the ballot box. The electoral franchise is one which is conferred on each individual who exercises it, and which he has no right to trammel the free, judicious use of, by private oaths and secret combinations; and his duty is to his country and the Constitution, not to midnight caucuses of ambitious and crafty men, who glaze over their schemes of selfishness with well-affected anxiety for the public good.

Here Mr. Barry quoted what was said to be the oath of the society.

In my judgment, sir, a man who is a member of an established government, from which he receives the amplest protection of person and property, and to which, in return, he owes the amplest measure of fidelity and obedience, has not the moral right to take such an oath as that I have quoted. He may as well owe allegiance to a foreign sovereign, and be ready to obey his commands, as assume obligations to any society of his countrymen which place him in collision with his own government. So plain, and almost self-evident is this truth, that a year since no one in this country could have been found to question it, as no one will a year or two hence, when this bubble, with its tints that delude some eyes, shall have passed into oblivion, with its elder brothers, the Alien and Sedition Laws, and when the public mind, which is now swayed from its self-poised equilibrium by a temporary excitement, shall have recovered its just position.

The oath provides that the member shall "not, under any circumstances, expose the name of any member of this order, nor reveal the existence of such an organization." This portion of the oath, perhaps, explains why those not in the order have never met a man who confessed that he belonged to it. And, sir, we have heard men deny connection with it, who we have every reason to be satisfied were members. Has any man the right to take an oath binding himself to the continuous statement of an untruth. Can that institution be good whose first fruits are thus evil? No, sir; it is wrong, radically wrong. Nor can the guilt of the deception be escaped by the flimsy evasion that the real name of the order is not "Know-Nothing," and that, consequently, a man may safely say he does not belong to one of that name, though he really is connected with the order which the public have designated by that title, and he well knows it is the one alluded to by the inquirer. Since his intention is to deceive, he is responsible for the deceit. Nor can he escape by the plea that the querist has no right to put the question, and that he is, therefore, at liberty to disregard the truth in his answer. It is by no means certain that each citizen has not the right to ask every other any question he may see fit, in reference to public matters, without being liable to the charge of inquisition or impertinence; and though the person asked may have the choice of silence or speech, he is under the common obligation that rests on all men, *if he an-*

swers at all, to tell the truth. No oaths sworn, however solemnly, nor with the direst penalties that a secret midnight association ever devised, can discharge a citizen from the eternal duty of veracity. The difficulties in respect to truthfulness, in which a member is involved, arise from his oath to conceal the existence of the order, and his own connection with it. The object seems to be to protect the members from the odium with which secret political associations have been viewed in this country, and to secure the benefits of such an organization, while they escape the responsibility of a connection with it. There is more of wily cunning than of republican frankness and manhood in such a course.

But this secrecy necessarily destroys all confidence between men. Till this new order sprang into existence, with its frightful demands upon the conscience of its members, there existed among the citizens of our country such mutual trustfulness that the statements of men of good character were received without distrust upon all subjects; but since it has come to be admitted that some men, of hitherto unquestioned veracity, have falsely denied their connection with the order of the Know-Nothings, and it has even been more than suspected that some of those from whom we have a right to expect an especial purity of life, and by whom we have been accustomed to be taught that it is better to die than to stain our lips with untruth, have taken the oath before quoted, which requires of them conduct so much at variance with their teaching, it is not to be wondered at that *some have become skeptical of the existence of human veracity.* The whole social fabric rests upon the belief of truth among men; and the strongest bond of faith in an individual's truthfulness is the well-founded opinion that he has never once voluntarily defiled his soul with falsehood. To conceal effectually their connection with the order, the members may be, and some possibly have been, driven to a line of conduct, in my opinion, more reprehensible than a direct denial of the truth—the acting of a protracted and systematic falsehood. Having formerly belonged to the old Whig and Democratic parties, and not daring to excite suspicions, or to confirm those already entertained, of their belonging to the Know-Nothings, by separating themselves openly from their old friends, they still affect to retain their interest in party action and party success, allow themselves to be treated as members of their old parties, become possessed of information, which is given to them, as they well know, on the belief of their being still faithful to their former friends, and yet, while acting thus, they are

under oaths which bind them to different parties, different principles, and different candidates.

That this is no idle supposition of my own, as some credulous persons, who think that such things cannot be in a free and manly country like our own, may be tempted to exclaim, I will quote from the resolves of a Know-Nothing Council in Brooklyn, New York. The preamble to those resolves declares that "*good men* and *true* had already been nominated by the great political parties of the State, *the nomination of some of whom was effected by the direct action of this order.*" If any man, Whig or Democrat, had smuggled himself into a meeting of the other party, by pretending to belong to it, the judgment of all men would reprobate the act as perfidious and disgraceful. The contempt of all honorable men would follow him like a curse. What rule of morals can tolerate in members of this order that which is condemned in all other parties? Their first departure from sound principles in joining the order involves subsequent delinquencies to conceal it, and make it effectual. If trade and commerce require good faith and sincerity in those who follow those callings, how much more are they indispensable among those who are acting for the public, and whose conduct may influence for years to come their country's welfare.

It has been claimed, in support of the order, that both of the old parties are corrupt, and that it was necessary to form a new party, of purer principles and better material. An architect who should pronounce both of two buildings which he had examined unsound and unsafe in structure and detail would hardly be thought reliable if he should attempt to construct another edifice of the brick and stone which he had just condemned as useless and unworthy. Yet this order assumes to form, out of the corrupt members of the old parties, a society of immaculate patriots. A few of the old partisans get together and rate themselves above reproach, and then adopt such other citizens, members of the old corrupt parties, as are willing to unite in asserting the knavery of all other men and their own purity. This Pharisaical assumption of superiority is worthy of all rebuke and contempt. Those of this order supposed to be in this House, I must say, in all courtesy, I cannot rank one whit above the average of their fellow members in the qualities of citizens or legislators. Self-canonized saints and self-elected patriots are of questionable stuff. There is a spontaneous distrust of the assumption that arrogates to itself a Benjamin's portion of the common stock of human virtue and excellence;

and the claim of impostors is usually extensive in proportion as it is groundless.

In a free government, I hold, sir, that there is no right in a portion of the people, whether a minority or a majority, to adopt a secret political policy, or pursue it by secret means. The commonwealth is the joint product of the thoughts and wills of the people who compose it. They have risked their mutual interests in a common venture. Counsel and service are due from each to all. Whatever pertains to the common benefit is the proper subject of mutual deliberation. I, as a member of society, may justly expect its protection in every right which the laws or the Constitution give me—protection not only against foreign invasion, but also against domestic violence; against the man who assaults my person, or wrests my property from me; but not a whit less against those who, by means of secret cabals, midnight assemblages, unnatural oaths, and malicious combinations, would peril, impair, or destroy any one of my civil or political rights. Society can protect me, can protect itself against the effects of these secret political associations, only by extirpating them. They are the fruits and the offspring of revolution: putrid bodies which the thunder of anarchy lifts from the deep in which they slumbered.

All citizens, I think, sir, are under obligations of candor and sincerity toward each other in matters political. I think the very nature of a free government requires it of them. The ballot of each voter is intended to be secret only so far as to protect him against violence, or any undue influence in preparing and casting it. This right to absolute freedom in performing this high civil act is not clearer than the corresponding obligation of every other man to refrain from all attempts to disturb, oppress, or intimidate him in the exercise of it. But when the ballot is put into the box, it ceases to be a mere private act, and becomes a part of the public history. An attempt at concealment provokes inquiry, and justifies it. There can be but two reasons for keeping a vote secret—timidity, if we think ourselves right, or shame and conscious guilt, if we believe ourselves wrong. And a man must be deficient in some of the better qualities of citizenship who is willing to assign either of them as an excuse for a secret vote. And the motives that prompt the vote, since he has no right to be influenced by any but those of the public good, are also proper subjects of inquiry, and, *if the voter be a man, of free and truthful answer.* No man ever cast a secret vote, even if his purpose were as kindly a one as to avoid making a preference between rival friends,

but felt his self-respect lowered, and that he had not acted up to the full dignity of citizenship. There is, and there should be, no penalty attached to the exercise of the right of voting, but the estimate which the public may attach to a man's character, according as he is thought to have used his privilege well or ill. It is simply an item going to make up the aggregate of character. Nor should there be laws compelling him to declare how he voted; in free countries, the great mass of men being independent, in fact, as well as name, will spurn concealment in the matter; and I do not know, in all history, of more than one inquisitorial attempt, by an *ex post facto* law, to compel the citizen to declare for whom he had voted; and this attempt, so tyrannical, was made, not by foreigners, who, ignorant of the genius of republicanism, might, unconsciously, have violated its principles; nor by the old parties of the country who, immersed in senility and corruption, might be indifferent to the forms of liberty, but by the conclave of patriots who assembled in New York as a Know Nothing council, representatives of those who are to regenerate America; who, mourning the decay of public spirit and the corruption of national virtue, have, by *self-election, and the imposition of their own hands,* set themselves apart for the work of reformation.

Public opinion is one of the most efficient restraints on human action. The punishments of this world seem, with but too many, more terrible than the retribution of that which is to come. The criticism, the censure of men often restrain evil-disposed persons, and an enlightened public opinion guides and sustains the virtue of individuals. We find the action of political parties is purest when it is most under the public eye; and, as the veil of secrecy is thrown about it, there is a culpable laxity of conduct. A private caucus, though there is no obligation of secrecy, is thought less free from corruption than a public convention. Meetings of which there is no record but the unsafe memory of those present are likely to be less judicious than those in which everything is recorded and published. A railroad, or other corporation directory, which gives its proceedings no publicity in a twelvemonth is the subject of distrust, and too often falls into downright knavery. These things we all see and know; and yet it is maintained that it is possible for an association, secret, irresponsible, its members unknown, and denying their connection with it, to select its candidates and elect them, and to control the government of a great country without danger to the rights of the people or of corruption among the members. Where this secrecy begins, free-

dom ends. When the streets of Paris streamed with blood; when the guillotine was the only engine whose activity was not palsied by the general terror that pervaded the land, the orders that plunged France into such frightful calamities issued from the midnight, secret, irresponsible association of the Jacobins. A career that begins in religious and political proscription may well end, like theirs, with the lamp-post and the guillotine.

The first avowed purpose of the order which I shall discuss is the exclusion of foreigners from office. The pledge of the member on entering the order is that "he will not vote or give his influence for any man for any office in the gift of the people unless he be an American-born citizen." A judicious man, it seems to me, will hardly deny that it is equally criminal to do, by indirection, as to do openly that which we are forbidden under the Constitution. That instrument confers on alien-born citizens a complete eligibility to seats in the House of Representatives and Senate, when the respective periods of age and citizenship have been completed, as upon native-born citizens. No man will deny that Congress possesses no power to add, by law, to the age or period of citizenship fixed by the Constitution, and that such a law would be unconstitutional and void. Any attempt to do so would be an assault upon a right which the framers of the Constitution thought of sufficient importance to guard by a special provision, and I can see no distinction in justice between attempting to rob them of the rights by a law and by a secret association.

There is no obligation, in my judgment, to vote for a foreigner to any office more than for any other citizen; but there is an obligation not to form a combination against him by which he is to be disfranchised or stinted in the enjoyment of any constitutional right.

If it be true that foreigners are less fit for office than native citizens, it is a gross distrust of the national common sense to suppose the people will not act upon it, and a poor commentary upon public spirit that special oaths and the terrors of a secret inquisition are needed to urge them up to the discharge of an obvious duty. I cannot but believe that true policy and justice are, in this case, harmonious. These foreigners are in our midst; they have come under our invitation, and have trusted to the liberal spirit of the age and the generous provisions of our laws and Constitution, and our purpose should be, by acting up to the full measure of good faith, to encourage them to the highest standard of republican citizenship. They are citizens, with the right to vote, and policy dictates that they should

be so treated as soonest to nationalize them, that the peculiarities of their birth, education, language, and ideas may be lost in the character of our own people. There is no safety in a course that excludes them from any right which is theirs by the Constitution and laws, and which induces them, from wounded pride, to perpetuate the distinctions which separate them from the native-born citizens.

Justice would teach us that foreigners should receive a share of offices proportioned to their number, if the subject becomes a matter of mathematical division; but it would be more fortunate for the peace of the country if the question of nativity and religion were never raised, and if selections to office were made according as Mr. Jefferson's strong questions are answered, "Is he honest? Is he competent? If he faithful to the Constitution?"

Second. The extension of the term of naturalization to twenty-one years, or some other period longer than five years.

The intermingling of races here is one potent element of our growth and success. Those nations have been foremost in the world's history whose characters have been the amalgam of the greatest variety of the best races of the earth. A constant immigration of enough to produce variety, but not to perpetuate diversity, would, I believe, contribute to preserve and increase our vigor. But I wish to see no foreign settlements in our country; no papers, schools, and school-books in a foreign tongue; no regions of country in which a traveler might fancy himself on the banks of the Rhine, or the greensward of Ireland. I desire our people to be homogeneous in language and institutions; I would have the first generation of foreigners to be the last, their children I would have American in tongue, in education, in principle, and in law.

It is said that this extension is rendered necessary by the abuses of the present system.

These abuses are chiefly through false naturalization papers and false swearing. They exist, I am inclined to think, less through any defect in the present laws than through the defect in their enforcement. The use of false naturalization papers, illegal voting, and the perjury attendant upon both are offences against the laws of the State where they are committed; and it is to the State tribunals that the citizens must look for redress and the vindication of their rights. There is no ground, none whatever, to believe that grand juries would be more active to find indictments under a new law than under the old one, nor that petit juries would be more prompt to convict.

It is useless to cumber the statute book with laws which there is not the public virtue to enforce. No law can execute itself; it must have the agency of man to administer it, and it is useless to attempt to make the barbarous severity of the statute atone for the apathy of the people. If the evil exists in the magnitude described, if offences are so many and punishments so rare, the root of the evil would seem to lie deeper than an imperfect statute. It cannot lie in the law merely, for that would be pointed out and remedied; nor in the officers of the law, the juries, the attorneys, and the judges, for a wholesome public opinion would impel them to the discharge of their duty; but it lies deeper; I fear it lies in a corrupted public sentiment. Individuals dislike the labor and inconvenience with which a prosecution is attended, and, after an ebullition of temper and a few newspaper paragraphs upon election frauds, the matter is allowed to drop. Another reason, perhaps, quite as effectual, is that both parties in the cities have been engaged in the disreputable work of procuring fraudulent votes, and each fears to provoke inquiry into its own conduct by attempting to expose the crimes of the other. But even if all the illegal voting complained of were confined to foreigners, by whom is the temptation to commit the offence offered? Certainly by our own native citizens; and it seems strange that the whole indignation is visited upon the foreigner, who is denounced as "ignorant and corrupt," and scarcely a censure is bestowed upon the native who debauched him, and who, I suppose, by contrast, is to be regarded as "intelligent and virtuous."

But, Mr. Chairman, it seems to me that the cause of the evil which is ascribed to the immigration of foreigners may be justly sought for even further back than the condition of public sentiment where it exists. As a state becomes more refined and populous, the disparity in the condition of the people becomes greater. The inequalities of wealth and social advantages are more obvious; the rich become richer and the poor poorer. If there be any method of preventing this result, political philosophy has not yet announced it; and the evil has begun to be felt in this country in our large cities. There is, in all of them, a portion of the community, happily for us yet small, who are sunk in vice and ignorance. As the population becomes denser there will be accessions constantly to the number, and in due time there will exist a class in this country, as in the Old World, in which vice, and crime, and destitution will be the hereditary condition. It is from this class, and those who approach its condition, that the material for fraudulent voting

is drawn. So far as this class exists in our midst, a large share of it, I believe, will be found among the foreign population; because they congregate about the cities, where the vice of proletarianism mainly flourishes, and because the native population, from its superior intelligence and familiarity with the mode of life here, has retained the more lucrative occupations, leaving to the foreigner the humbler and cheaper ones, and those which are first to suffer from revulsions in trade and commerce. Population and production march on closely together; there will not, for any great length of time, be a wide disparity between the supply of food and the number of people to consume it. And when the amount produced and that requisite for consumption are about equal, a slight decrease of the former, or of the supply of labor by which it is to be produced, results in poverty and starvation. Such is the state of things in the greater part of Europe. Such, in a mitigated form, is getting to be the condition of our larger cities. The accounts of the destitution now prevailing in some of them among the honest and industrious and the gloomy anticipations of the coming winter are heartrending. Yet government has not caused it; the tariff has not caused it; foreigners have not caused it; nor even the present war, though that event may have precipitated it. It is the effect of those mutations which are the inevitable condition of existence, and which are brought about by the whole variety of those perplexed causes which have produced that result which we call "the present state of things." Our very prosperity has been as effective in bringing it about as any other cause. High excitements in the commercial world are always followed by periods of languor and depression, and the suggestions of quacks and their still more dangerous remedies are alike to be discarded. Republican institutions can protect us against unjust legislation, oppressive taxes, and guilty wars, but they cannot secure us against the inexorable laws of trade, commerce, and manufactures. It is, then, unjust to ascribe to transient causes evils which appear inseparable from the structure of civilized society.

But, sir, if all these evils were the result of fraudulent voting, how would the mischief be remedied by extending the period of probation from five to twenty-one years? If five years' delay is so irksome that the foreigner will risk the penalties of fraudulent voting and perjury to escape it, it seems to me the temptation would be multiplied fourfold by increasing the delay to twenty-one years.

So far as the extension of the period to twenty-one years is

a sentiment, a mere gratification of a feeling or a prejudice, it is either above or beneath reason, but, as a statesman's remedy for an existing abuse, it seems entirely incompetent and unsatisfactory.

The discussion of this subject is too portentous, too pregnant with the high philosophy of races, population, and government, to be handled by those whose whole political pharmacy is persecution, whose highest ambition is the ejection of an Irish tide-waiter from his office, and the summit of their statesmanship to combine the "isms" that are *out* against the Democrats who are *in*. The real danger is that foreigners will congregate in some States of the Union in such numbers, preserving the language, manners, and traditions of the Old World, as to root out the native population speaking the English tongue, and that we may come to be a confederacy of States as foreign in origin, in language, customs, institutions, and religion as are the several nations combined by force under the sway of the Emperor of Austria or the Czar of Russia. Nothing can tend to accomplish this more speedily than proscription. If the foreigner finds himself one of a degraded caste while living among the native population, he will naturally seek those regions in which his own countrymen are numerous, and a little more concentration of the foreign population in some of the Northwestern States will give them an absolute numerical majority and insure the control there. In such an event they would, of course, retaliate the proscription under which they had suffered; they would, perhaps, become even as intolerant as the Know Nothings, and permit no native-born citizen, nor the son of a native, to vote or hold office; they would send naturalized foreigners to represent them here in both Houses, as they would have the constitutional right to do; they would have their relative weight in presidential elections, and the "foreign vote" would then be something distinct and palpable for politicians to intrigue after. No state of things could be more deplorable than the war of races, of which this order is the beginning, and, if it be not crushed at once by the honesty and common sense of the people, it may give to our history a chapter as dark and bloody as that of the English revolutions or of the religious wars of the Huguenots and Catholics in France. You know, sir, that this is the evil to be dreaded in the future, compared to which all German anti-Sabbath societies, Irish riots, illegal voting, and foreign military companies sink into utter insignificance, and before which, as remedies, the extension of the term of naturalization to twenty-one years and the Know Nothing rem-

edy of exclusion from office are but as bands of tow to devouring flames. Neither of these would diminish perceptibly the number of immigrants; and, while the annual supply continues or increases, any law which tends to perpetuate the distinction of races will only make the ultimate danger more formidable.

The duty of excluding paupers, vagrants, convicts, and felons is imperative; and, if the evil be as great as is charged, the only surprise is that we have allowed a public mischief of such gravity to exist so long. Laws, rigorous and effective, should be enacted if such are not now on the statute book; and every citizen who regards the public weal should unite heartily in their enforcement.

The third remedy proposed is the repeal of the naturalization laws. But even this would not protect us from the influx of foreigners, nor from the ill effects of their voting, in case any of the States see fit to bestow that right upon them; and, if the naturalization laws should be repealed, or the term extended to twenty-one years, under the influence of a temporary excitement, the natural reaction of popular feeling would demand a restoration of the old law; or the right of voting and other privileges of citizenship would be conferred by the States upon their alien inhabitants. The power of each State, then, is ample over its own ballot-box, and it can be approached only by those on whom she confers the right. There is not a voter of the Union who derives his power from the Federal Government; he may be naturalized under a law of Congress, and possess all that such laws can bestow, yet never be permitted to cast a vote or hold a State office in the Union. This is fortunate, as the necessities of States are different. The evil is local, so should the remedy be.

I do not deny—on the contrary, I affirm—the right of a nation to impose such terms on the influx of foreigners as a due regard to her own interest and safety requires. She is the sole judge of the evil and the remedy. If there were just reason to apprehend such an immigration from Europe or Asia as would unduly crowd our people, impoverish our labor, or exhaust our soil, I should advocate a policy more prompt and adapted to the emergency than the ritual of the Know Nothings, or their clumsy imitation of the secrecy and persecution of the Jesuits. We have the right, and I should favor its exercise in that extremity, to deny all foreigners admission, and I would, in that case, have our coast present an iron front to the tide of immigration as it does to the waves of the ocean, so long as the danger existed. But I would appeal to the manly com-

mon sense of the people, and have our action, if any were taken, wear all the dignity of national justice and self-defence, and not the sinister aspect of a revengeful intrigue and midnight cabal. I do not believe the time for such action has come; and, if it were now thick upon us, the remedies of Know Nothingism are poor, flimsy—wholly inadequate.

It cannot be denied that the policy of our Government has been to encourage immigration. The vast amount of fertile unoccupied territory, the number of canals to be dug, of railroads to be built, and all the variety of labor required in a new country induced our ancestors to solicit foreign aid. The surplus labor and capital of Europe found employment here. Most of the immigrants settled in the Northern and Northwestern States, and it is owing to this addition to their native population that their numbers have increased faster than the Southern States. These foreigners not only brought their strength to increase our productive industry, but the aggregate of money they have introduced into the country has been very large; many of them, being inferior in education and social advantages to our native population, turned to those occupations which are almost solely physical, requiring vigor of muscle and strength of constitution, leaving to the native population almost a monopoly of the more scientific and remunerative branches of industry. This population has furnished to the North a large increase of capital. It has supplied capital with a cheaper labor by increasing the amount of it. It has given greater activity to manufacturers by adding several millions to the number of consumers. It has strengthened the shipping interest by an amount of passage money equal, it is said, to the whole export freights of the country. The North could not have completed one-tenth of her improvements and kept up her other interests to their present extent without this foreign labor. Most of these improvements at the South have been made by the native labor and without materially diminishing the annual supply of the staple productions of the country. As a section, the North has reaped the benefits of this immigration, and it will have to meet the consequences which flow from it. The question of the organization of labor, its rights and duties, is perhaps the most vexed one of all that disturb the body politic. By immigration we are perhaps fifty years in advance of what we should have been had increase in numbers been natural only. The difficulties that attend our condition are not mainly attributable to the *foreign origin* of a part of the population, but to the number of the population. If every foreigner were this

day removed from the country, and natives in equal numbers substituted, the difficulties which exist now would be as great then and substantially the same. It matters not where the population is born, if there is not work for them to do and they have no accumulations in store, there will be want, misery, and destitution. It results from the density of population and not from its nativity. If the population of New York City were to-day wholly native, would the cessation of business, the partial suspension of manufactures, trade, and commerce, afflict them less sorely than it does the present mixed population? But yesterday and there was labor for all, and, with labor, food and contentment; to-day there is a deficient supply, and at the same time a greater scarcity and dearness of the necessaries of life. If there be any way to prevent these fluctuations in business, and the suffering consequent upon them, it has never yet been made known.

The last purpose to be achieved by the Know Nothings is the exclusion of all Catholics from office. It is not to be denied that there is diversity of opinion among the brethren of different sections. The order seems already to have fallen into the most corrupt practice attributed to the old parties and to the most corrupt class of the old politicians, that of varying its creed with every change of latitude. In the infancy of its existence it is already mature in its vices, and, with a most surprising harmony between the end and the means, it aims at political and religious intolerance by seizing on every prejudice and adopting every creed. The foreign Protestant is told that the order strikes only at Catholicism, and the native Catholic is assured that it interferes with no man's religion, but attempts to limit the influence of foreigners.

In Louisiana Catholics are allowed to join the order, we are told—and why? Because that denomination is too numerous there to be assailed openly.

It is something that will, I dare say, excite surprise through the civilized world, when it becomes known, that the people of this country, who have been first to practice, in its fullest extent, the great Christian doctrine of toleration, are engaged in discussing whether or not the Government is safe while it continues. With what show of justice or consistency can we plead to the Catholic sovereigns of Europe for the toleration of Protestantism in their dominions while we disfranchise our fellow citizens of the Catholic faith? How can we ask them to go forward in relaxing the fetters of opinion while we are going backward? How dare we talk of freedom of conscience

when more than a million of our citizens are to be excluded from office for conscience sake?

Yesterday to have argued in favor of religious toleration in this country would have been absurd, for none could have been found to deny or question it. But to-day there is a sect boasting that it can control the country, avowing the old papist and monarchical doctrine of political exclusion for religious opinions' sake. The arguments by which they sustain themselves are those by which the Inquisition justified their probing the consciences, and burning the bodies, of men five hundred years ago, and against which Protestantism has struggled since the days of Luther. You, sir, and I, and all of us owe our own right to worship God according to our consciences to that very doctrine which this new order abjures; and, if the right of the Catholic is first assailed and destroyed, you, sir, or another member who believes according to a different Protestant creed, may be excluded from this House and from other preferment because of your religious faith. The security of all citizens rests upon the same broad basis of universal right. Confederates who disfranchise one class of citizens soon turn upon each other; the strong argument of general right is destroyed by their united action, and the proscriptionist of yesterday is the proscribed of to-morrow. Human judgment has recognized the inexorable justice of the sentence which consigned Robespierre and his accomplices to the same guillotine to which they had condemned so many thousand better men.

If the Catholic be untrustworthy as a citizen and the public liberty is unsafe in his keeping, it is but a natural, logical consequence that he shall not be permitted to disseminate a faith which is adjudged hostile to national independence; that he shall not be allowed to set the evil example of the practice of his religion before the public, that it shall not be preached from the pulpit, that it shall not be taught in the schools, and that, by all the energy of the law, it shall be utterly exterminated.

This was the course which England pursued when she entertained the same fears of the Catholics three hundred years ago, and which she has lived to see the absurdity of, and has removed almost, if not quite, every disability imposed. Perhaps, however, this new sect will not startle the public mind by proposing too much at once, and holds that it will be time enough to propose further and more minute persecution when the national sentiment is debauched enough to entertain favorably this first great departure from the unbounded toleration of our fathers.

It is the experience of this country that persecution strengthens a new creed. The manhood of our nature, of all true, genuine men, clings more ardently to a faith which brings peril to the believer. With the history of Protestantism in our minds, and remembering how every effort to destroy it only planted it deeper in the hearts of the faithful, it is natural to believe that persecution will invigorate other creeds and sects. In my judgment, this attempt at proscription will do more to spread Catholicism here than all the treasures of Rome or all the Jesuitism of the cardinals.

Now, sir, what is this movement at the North, and who are engaged in it? It is a combination of all the "isms" of that section. Abolitionism, Free Soilism, Whigism, Woman Rightism, Socialism, Anti-Rentism, gathered together from a thousand fretful rills and mingling their currents in one common channel. Abolitionism and Know Nothingism are akin; the first is a denial of the rights of a section of the Union and an attempt to destroy them because, in its wisdom, it has determined that those rights have not the proper moral sanction; the other is a denial of the rights of a class of citizens, regardless of section. One is a crusade against the rights of States; the other against the rights of individuals. The one openly spurns the Constitution; the other attempts a flimsy evasion of it. This daringly attempts a breach and an assault; that more cunningly adopts and prepares a surprise. The one almost commands respect for nefarious schemes by boldness and courage; the other would bring discredit on the best of causes by evasion, circuity, and irresponsible assaults. In Massachusetts, where the sect made their own nominations, so far as I can learn the politics of those elected to Congress, all are ultra anti-slavery men.[1]

Those whom the order voted for elsewhere in the North are of the ultra stamp almost without exception. To secure the vote of the Free Soilers and Abolitionists of both the old parties it was indispensable to have a candidate tinctured strongly with those heresies, and a flavor of Know Nothingism was added to secure the coöperation of certain Democrats whom unadulterated Whiggery and Abolitionism might have disgusted. It was a combination and a triumph of all that was ultra, and factious, and discontented, over all that was moderate, and judicious, and studious of the public peace.

Now that most of the elections at the North are over, a laborious attempt is made to persuade the South that the order is free of those Abolition tendencies which secured its triumph.

[1] "Know-Nothings" from this State, such as Nathaniel P. Banks, shortly became radical Republicans.

The one great fact relied on is that the order in New York is opposed to Seward.

Mr. Seward's reason for refusing to join the order, I doubt not, was that, with his sagacity, looking to ultimate success, he could not fail to see that the whole movement would be short-lived, and that, when it ended, no political act, not even membership of the Hartford convention, with its secret proceedings, could be more destructive to the prospects of a public man than to have avowed the principles of the order. You, sir, and I, we all know that it is the almost universal opinion in political circles here that this thing will have a brief day. The most anxious wet-nurses of the bantling hardly expect it to live through the presidential canvass of 1856. There is everywhere the most feverish anxiety among the faithful to secure some little official crumb of comfort before it is forever too late. Each longs to be carried into the pool while the waters are troubled, for the time of the troubling, they know full well, will soon be past, and then where shall they be healed? Evidences of premature decay are already visible. The party will vanish as suddenly as it arose and leave scarcely a wreck behind. Its members feel the sandy foundation slipping from beneath their feet. They feel their sentence is pronounced each time they hear repeated the wise and tolerant doctrines of our political religion, which are grafted upon our Constitution. Blank annihilation stares them in the face. They see indignation and distrust without, discord and rebellion within. Their secrecy is betrayed and mocked, their intolerance is despised, and their prestige is broken.

Were there no cause for the dissolution of the order in its principles, the discordant materials which compose it would soon precipitate its destruction. The ultra men already elected, agreeing in nothing but hostility to the South, to aliens, and to Catholics, can harmonize in no course of action, foreign or domestic, unless, by the happening of a Whig majority in Congress, the tariff should be altered to suit the protectionist theory, or some other doctrine of that party be embodied in a law. If this order takes hold in the South, it will surprise both friends and opponents. It will be a matter of wonder why that section, suffering none of the hardships which are pleaded as an excuse for the order in the North, and from her institutions peculiarly averse to secret and irresponsible associations, should discard a long history of generous toleration to adopt the creed of proscription, and wear the name of an order which, in the Northern States, has beaten down the defenders of the Constitution and

State rights, and inaugurated more fully than ever before the era of consolidation and fanaticism.

In a crisis like the present it becomes the Democratic party to remain steadfast to its old principles. In the "act for establishing religious freedom," adopted in Virginia in 1786 and originating in the benevolent mind of Mr. Jefferson, it was enacted that,

> "No man shall be enforced, restrained, molested, or burdened in his body or goods, nor shall he otherwise suffer on account of his religious opinions or belief, but that all men shall be free to profess, and by argument, to maintain, their opinions in matters of religion, and that the same SHALL IN NOWISE DIMINISH, ENLARGE, OR AFFECT THEIR CIVIL CAPACITIES."

On this tolerant principle the Democratic party, through all the variety of disaster and success, has stood from that day to this. It has been the guardian of every civil and political right, of every individual, and of every section. No error has been too gigantic for its assault, no right too insignificant for its protection. When the rights of the States were in peril during the Federal Administration of the elder Adams, it was the champion of our faith, Mr. Jefferson, who was foremost in their defence, resting their security upon principles as wise and venerable as the Constitution itself, and triumphantly sustained by the Democratic party. It was during his Administration that the "Alien and Sedition Laws," so violative of personal right, were effaced from the statute book by the votes of the same Democratic party which it is now attempted to seduce into heresies more abominable than those which it then abolished. This new ism is the old "alien law," under a thin disguise; and these two, with "Native Americanism," are bodies into which the old unlaid spirit of Federalism has insinuated itself, hoping, under these forms, to obtain a favor which was always denied it when recognized. It is like Petruchio's nether wedding garment, "a thrice-turned pair of old breeches," betraying the nakedness it was intended to conceal.

Mr. Banks.—It is but a few years since we asked for a secret or independent ballot, in virtue of the right of every man to give a vote, not only uncontrolled by, but unknown to, other men. It only perfected the right of citizens to vote by ballot, for the ballot itself is a secret institution; but no proposition could have excited greater commotion than this.

Other difficulties were not of rare occurrence; that element of power which is now exciting such attention throughout the country, which seems to have hitherto held a balance of power

in nearly all communities, and to have decided nearly every contested election, upon a policy dictated by its leaders, was not without its power among us; and a recent and most important contest, so decided, has impressed a seated grief upon many thousand hearts. I mean the influence of foreign votes.

All these causes, some operating on one mind and some upon another, have produced discontent among men of all parties. It was not to be expected that ordinary men could rise superior or be wholly indifferent to them. Nor is it a recent nor sudden ebullition of feeling. For many years indications of revolt have been noted. New combinations have appeared and disappeared. One by one, men have abandoned their former organizations, with more or less success, but not in such strength as to give courage to the timid or security to the weak; and the masses of men remained in camp, waiting only a fitting opportunity to escape party drill. At length it came. In that mysterious manner so aptly described by the eloquent gentleman from Mississippi, somebody constructed a sort of subterranean passage by which men could pass from one camp to another, seeing nobody, knowing nobody, and saying nothing to anybody. Sir, you should have seen them go. Eighty thousand men, of every pursuit and opinion, in the brief space of three months, attested their belief in its efficiency and necessity. And was it not their right? Who will say that the people—the sole depositories of political power—discontented with existing parties, may not, even in this mysterious manner, make new combinations for the transaction of their own affairs, and erect new standards of policy for themselves? Is it not their right? Who says no? Their justification stands not so much upon their necessities as their convenience; and who can point out a more effectual or natural method of doing what they have done—the transposition of the rank and file of all parties into a new organization, excluding nobody but the leaders, taking everybody inside that desires to come, and leaving nobody outside but the driver? Who will say it is not the right of the people? Does the gentleman from Mississippi complain of their secrecy? Is it secrecy that makes the wrong? Sir, secrecy is their right. It belongs to them. No man and no power can justly take it from them. What have they done? As yet they have done nothing. You cannot punish men for that. Well, sir, these men have done nothing yet, except to carry an election here and there, and that is not treason, even though a Pennsylvania judge did charge a jury that certain things could not be done, or ought not to be done, or were criminal in point of law. Sir,

it is the people who are passing through these avenues, those who make judges and district attorneys, and they will take care of them all. They will take care of the juries and sheriffs as well as judges.

MICHAEL WALSH [N. Y.].—Has this avenue you have been speaking of any connection with the "underground railroad"?[1] [Laughter.]

MR. BANKS.—It has not. It is altogether another line of business. I own no stock in that corporation. [Renewed laughter.]

Now, a word upon secrecy in politics! Who made the President of the United States? The people, you will say, have elected him to the office. But who laid the train to which the people set fire? Sir, there never has been a presidential election in this country which has not been controlled by secret associations and combinations; and, let me say, too, by a combination which has no popular elements; which has no popularity in its constitution; which operates through a few privileged members; and it is, in fact, such combinations that control the government of the country. Who can undertake to say that the next presidential conventions will not be controlled by coteries of men whose only power is the secrecy with which their plans and purposes are held? Who will deny that it has been ever thus, or that it will be ever thus? Why is that criminal in the people which has been the constant practice of politicians?

But I am for publicity as well as secrecy. I go beyond the gentleman from Mississippi in that respect. I am for publicity when a man assumes to act for other men; but when he acts for himself I say that no man has a right to require him to divulge his purposes or views. If he choose to wear them on his sleeve, it is his right to do so; and, if he choose to keep them in his own breast, and to say nothing, and to know nothing [laughter], it is equally his right. But when a man assumes to act for others, then, sir, he has not the right, as a representative party, to secrecy; and, if the original power call upon him for a development of his policy, he cannot withhold it.

I may say here, in passing, that the secrecy which this country has, in some degree, contributed to fasten on the diplomacy of the world is an element of power which is doing more to crush the nations of the earth than any other element of op-

[1] A system of conveying fugitive slaves to Canada, conducted by Abolitionists.

pression. The five millions of men who are this hour in arms, under whose heavy tread the earth shakes, are not doing one-tenth part of the wrong to the generations now existing and yet unborn which the secret and false diplomacy of the world is producing in its effects upon them; and, so far as this country contributes, in any degree, to sustain the secrecy of diplomacy, so far, I say, its policy should be changed; and therefore I voted —as I think my friend from Mississippi did not vote—for an exposition of what our friends and diplomatic agents were doing in the congress of Ostend.

Mr. Bayly, of Virginia.—Oh, let that alone.

Mr. Banks.—Yes, if the committee will report soon. [Laughter.]

Then I ask the attention of the committee for a moment to the program which the gentleman from Mississippi exhibited as the proposed operations of what he calls the Know Nothings. I do not know whether he is right or wrong; but in a paper published in Pennsylvania I read some months since an *exposé* of what the purposes of that organization are, and of the means through which they intend to operate. In the first place, I did not see anything there about the naturalization laws; nothing of their repeal nor the limitation of the term; nor any other matter or topic referring to that subject. *The Pennsylvanian* published the document, and it was copied in our section of the country as a full, entire, and perfect *exposé* of the purposes of the secret association existing in Pennsylvania and having its ramifications throughout the country. Therefore, it does not appear that interference with the naturalization laws is one of these purposes. I looked carefully to that point, but I saw nothing referring to that, nor to the Catholic Church or Catholic religion.

Mr. Barry.—Will the gentleman allow me to correct him. I read here from the same paper, *The Pennsylvanian,* and if the gentleman admits this to be an authentic copy of the rules of the body——

Mr. Banks.—Sir, I admit nothing. I know nothing. [Laughter.]

Mr. Barry.—I hold in my hand the paper to which the gentleman from Massachusetts refers—*The Pennsylvanian*—and I find in the oath which the member is required to take the following sentence:

"That you will support, in all political matters, for all political offices, second degree members of this order, providing it be necessary for the American interest; that, if it may be done legally, you will, when elected

to any office, remove all foreigners, aliens, or Roman Catholics from office, and that you will, in no case, appoint such to office."

Mr. Banks.—I call the attention of my friend to the fact that in his speech he used the term "Catholics"; he now reads it "Roman Catholics."

Mr. Barry.—Well, in our section of the country Catholics are understood as Roman Catholics.

Mr. Banks.—I beg the gentleman's pardon if I say that there may be a distinction in the terms.

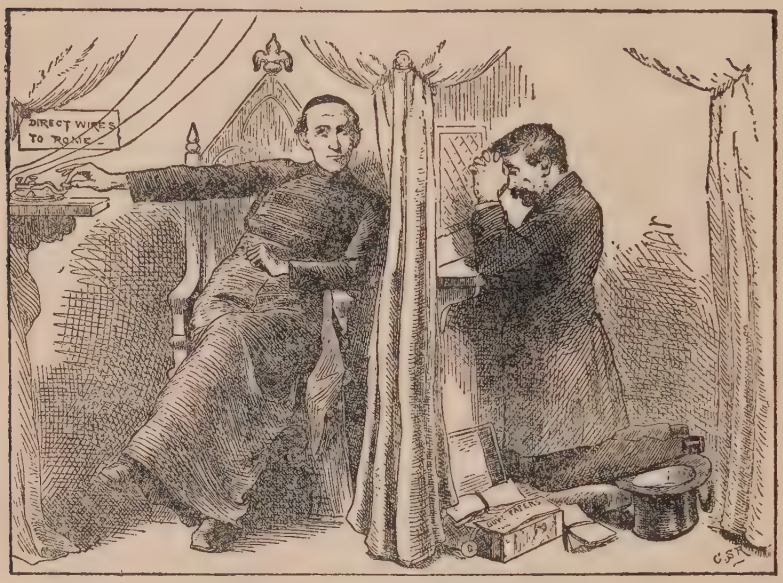
Mr. Barry.—I venture to say that no other gentleman in the House misunderstood me, in speaking of Catholics, except the gentleman from Massachusetts, who might do so on Know Nothing principles. [Laughter.]

Mr. Banks.—I noticed the distinction, and I purpose to speak of it. I have no objection to any man of the Catholic Church or faith. Here is our friend from Pennsylvania [Mr. Chandler], an amiable, learned, and eloquent man; I might be willing to vote for him, Catholic as he is, in preference, perhaps, to others nearer my political faith than he is. It cannot concern me, and it can concern no man, that, as a matter of faith, any person cherishes the doctrine of transubstantiation, accords the full measure of Catholic veneration to sacred relics or images, and accepts every article of the Nicene creed. Each man is accountable for his own faith, as I for mine. And, even though my name were appended to the declaration read to us by the gentleman from Mississippi from *The Pennsylvanian,* I might still vote for such a man if otherwise it lay in my way to do so.

But there is another branch of this subject. It is a current belief that the Pope, the head of the Roman Church, who stands as the Vicar of God, and is invested with his attributes of infallibility, is not only supreme in matters of faith, but has also a temporal power that can not only control governments, but, in fitting exigencies, may absolve his disciples from their allegiance. The power was asserted in England under Henry VIII and Elizabeth, and it has never been disavowed there, nor in Spain, nor in any other land, Catholic or Protestant, by the authority of the Roman Church. My name is not appended to the *exposé* read to us here, nor do I know much about it; but I will say that, if it be true that the Pope is held to be supreme in secular as in sacred affairs, that he can absolve men from their relations with others not of the true faith, it is not strange that men should hesitate in support of his followers. I would not

vote for any man holding to that doctrine, and, I doubt not, other gentlemen here would concur with me in that feeling.

And then, again, as to our foreign population. I bear no enmity toward foreigners. I have stood by the adopted citizens of my own State, without any distinction of person whatever, whether they were high or low, rich or poor. But if



THE UNSEEN SIGNAL OF THE JESUITS

From the collection of the New York Public Library

they hold as the supreme head of secular power the Pontiff of Rome, and consider that he can in any case absolve them from their allegiance to the commonwealth of Massachusetts or to the United States, why they have no claim whatever upon any man for support. If they understand that their interests are separate from those of American citizens, if they take direction from their spiritual guides in political matters, and, by preconcerted and private arrangements, form associations and make parties of their own, seeking to obtain and hold the balance of power, throwing their weight first into one scale and then into the other, as they may understand their own interest to dictate, they will force upon American citizens the alternative either to make similar combinations against them, by refusing to divide upon the ordinary maxims of party policy, or to abdicate

the seats of political power. A balance of power, under such circumstances, is absolute power, and the direction of public affairs is in the hands of those who wield it.

Now, I understand the breaking up of preëxisting organizations that were based upon the minute differences of opinion upon past questions, thus throwing an unfailing balance of power into the hands of a small minority of citizens, not of national origin, and possibly of only *quasi*-national interests, to be the purpose and object of the American organizations that have been so vigorously denounced. Of course I must admit that the necessity of such combinations to guard against the public dangers arising from causes I have stated—obedience to ecclesiastical direction in political affairs and the silent assumption of that position which gives to a small number of men a despotic balance of power—is denied. But I hesitate not to say that, in my own State, many thousand people entertain the belief that there is cause of fear, and my experience in its recent political history forces upon me a participation in that conviction.

I desire to call the attention of the committee to the present condition of the country as it regards emigration, and to contrast its results with that period when the Constitution and the early statutes of naturalization were adopted. Then the emigration from abroad, according to the estimate of Professor Tucker, was at the rate of five thousand per annum.

Look, now, at the returns made to us of European emigration. Within the present year, the last quarter of which has not yet expired, the foreign emigration will amount to very nearly four hundred thousand persons. And has this emigration reached its head? Who can say that? Look at the condition of Eastern and Western Europe, of Asia, of China? The earth shakes under the heavy tread of more than five million armed men, and every state is subjected to the general scourge of actual or impending war.

But emigration presents an avenue of escape from the evils of actual or impending war. Where shall they go? To Canada? To unstable Mexico? To South America? They will come to the United States. The three and a quarter millions of foreign-born people, and their descendants here, have so many heart strings out to draw their kith and kin to the New World. Our country begins to be known abroad. The most favorable account of this country, lately published, was written by a gentleman[1] who ten years since asked an American how it was

[1] Alexis De Tocqueville, author of "Democracy in America."

possible he, who had *seen* Europe, could *live* in America? They begin to feel that America is the only land where men can reach their true standard of greatness. Our institutions are debated by the light of every camp-fire and hearthstone on the face of the earth. The excited imaginations of distressed and heartbroken men invest that liberty we actually enjoy with the attributes of an almost fabulous and impossible prosperity and freedom. When one State is exhausted another is opened. How is it possible that emigration can have reached its head? Who can doubt its increase; or that it may, even in our time, be doubled?

Look to the East, to China, India, Japan, with their six hundred millions of people, often without employment or subsistence. They have already an idea of the institutions and capacity of the American continent. The Chinese, whose emigration has been limited to Japan, now seek the United States and the islands of our southern seas. They are already upon the Pacific Coast. Thirty or forty thousand are in California; and when we are, by steamships, within ten or twelve days' sail of their crowded empires, who can prophecy the extent of this new and unanticipated emigration? Who can check its encroachments? Not the State; that has been decided by the supreme judicial tribunal. What power is equal to that duty?

Shall we fend off with the bayonet? No, sir, if they come we shall admit them. There may be legitimate uses for them in the economy of God's providence. But have they a Christian character adapted to the institutions of this country? I ask the gentleman from Mississippi whether we shall give to them the rights of citizenship at the close of their first five years' residence? Or are we to have another extension of judicial decrees, another code of judicial fictions, that, in the absence of any legislation, shall determine what affinities of race, and color, and blood make it impossible for men ever to participate in the powers of government?

Did the framers of the Constitution declare that foreigners had a right to participate in the affairs of government? Not at all! They made the Constitution proscriptive. They declared by a unanimous vote of the convention that, after a brief period, no man but a native-born citizen should be eligible to the office of President. They declared that nine years' citizenship should be required to make a man eligible to the Senate, and seven years to the House of Representatives. They took from the States the power to confer citizenship which the States then exercised. There is nothing to show that they entertained

the idea advanced here that foreigners had a *right* to participate in the highest prerogatives of government. It was made a question of expediency. It was a privilege conferred.

Mr. Gerry, of Massachusetts—afterward Vice-President during the administration of Mr. Madison—said that he wished "in future eligibility might be confined to NATIVES. He was not singular," he said, "in his views. A great many of the most influential men in Massachusetts reasoned in like manner." Similar views were expressed by leading men of the Federal and Republican parties.

How is it with the foreign population of our day? The gentleman from Mississippi alluded to the flattery of foreign voters by General Scott in the campaign of 1852. But how was it with the Democratic party in that canvass? Where were the different parties of all the States? And how will it be with all the parties in the contest of 1856? May not they, too, go down on their knees to those who may hold the balance of power in that contest?

How is it that so many gentlemen of foreign birth hold diplomatic stations at foreign courts? Is it because General Pierce is President? Would not General Scott have pursued the same policy? May not the next man who occupies the presidential chair do the same thing? I do not censure one party and excuse another because the necessities of action are equally imperative on all.

There is no remedy for this state of affairs but that UNION which has been described to us, and that, I understand, to be a chief object of the party whose members are called Know Nothings. While it denies no rights to a minority, it demands the rights of a majority. While it denies to foreigners nothing that belongs to them, it claims and assumes the prerogative of government which is here the unquestioned right of Americans. Denying to no person the rights of conscience, or the freedom of religious opinion, it establishes and perpetuates both of these in placing the Government upon the basis which was contemplated by the Constitution and by the Fathers of this Republic.

In 1848 I supported the Democratic candidate for the presidency. I was intimate with one who likewise advocated the claims of General Cass, but who always said he would be defeated. It was a tight battle, as everyone knows; and none but very wise men knew its result until after the election. Some months after my friend mentioned to me his prediction. "How was it," said I, "that, while you labored for Cass, you were

certain of his defeat?" Said he, "I am a Jesuit; and our instructions were to shout for Cass but to vote for Taylor."

Now, sir, I know that a change of the statutes of naturalization will not remedy any possible evil of this character. But the revision of these statutes may be pressed upon our attention by the increased number of convicts and paupers of other governments that are sent here; by the hitherto unanticipated emigration from the Chinese Empire; by what we know of the past and fear of the future. These things do not, in my judgment, demand a repeal of the statutes of naturalization, but they will justify an extension of the term of residence now required and a more stringent execution of the laws existing than has been usual hitherto.

The gentleman from Mississippi suggested that this was a land of toleration—of religious toleration. Sir, I go far beyond that. I do not agree merely to the toleration of Catholics or Protestants here. They have an absolute right. Every person is entitled to religious freedom. The Catholic and the Protestant have their right under our institutions. No one will be more reluctant than myself to disturb or curtail the right. I am for extending it to the professors of every faith in the largest possible degree. But the concessions of the Constitution and laws end there. In matters of politics we extend to citizens from other lands the right of participation, not the right of control. In establishing the charter of religious freedom we neither avoid the responsibilities nor abdicate the duties of government.

CHAPTER VII

Aid to Freedmen

[the freedmen's bureau]

The Government's Care for Freedmen in the Civil War—Establishment of the Freedmen's Bureau—Debate on the Bill in the House: in Favor, Thomas D. Eliot [Mass.], Gen. Robert C. Schenck [O.], William D. Kelley [Pa.]; Opposed, Francis D. Kernan [N. Y.]—Debate in the Senate: in Favor, Charles Sumner [Mass.]; Opposed, Garrett Davis [Ky.]; Opposed to Certain Features, Thomas A. Hendricks [Ind.], James W. Grimes [Ia.], Samuel C. Pomeroy [Kan.], William Sprague [R. I.], John B. Henderson [Mo.], Henry S. Lane [Ind.], John P. Hale [N. H.]—Gen. Oliver O. Howard Is Made Commissioner of the Bureau; His Administration—Lyman Trumbull [Ill.] Introduces in the Senate Bill to Enlarge Powers of the Bureau; It Is Extensively Debated, Passed by Congress, and Vetoed by President Johnson—The President's Speech Defying Congress—Speech of Representative Ignatius Donnelly [Minn.] on "Education and Citizenship"—Thomas D. Eliot [Mass.] Introduces in the House Another Bill Framed to Avoid Constitutional Objections; It Is Passed by Congress; Vetoed by the President; Passed by Congress over the Veto.

IN the case of the negro the National Government permitted the exercise of civil duties before it conferred upon him civil rights. Thus from the beginning of the nation he was allowed to serve as a soldier [see Vol. VI, chapter IX.]

During the Civil War and for some time thereafter the negro was treated by the Government as a ward, somewhat in the manner in which it has always treated the Indian.

Before the end of 1864, says Alexander Johnston in his "American Political History," the advance of the Union armies had freed three million persons, of whom at least a million threw themselves helplessly upon the Federal Government for support. Attempts to em-

ploy some of them upon confiscated or abandoned plantations failed through the rapacity and inhumanity of the agents employed; and in 1863 great camps of freedmen were formed at different points, where the negroes were supplied with rations, compelled to work, and kept under some degree of oversight. The next year, 1864, this great responsibility was transferred from the War to the Treasury Department, but was still a mere incident of the military or war power of the President, as commander-in-chief, and was without any regulation of law.

A bill to establish a Bureau of Emancipation had been introduced in the House on January 12, 1863, but it failed to pass. Another bill passed the House on March 1, 1864, but failed in the Senate.

The Freedmen's Bureau

One of the last acts approved by President Lincoln (on March 3, 1865) established in the War Department a Bureau for the Relief of Freedmen and Refugees.

By this act the President, with the concurrence of the Senate, was authorized to appoint a Commissioner of the Bureau and one assistant commissioner for each seceded State, or military officer detailed for the duty, the function of whom was to superintend the disposition of provisions, clothing, etc., issued by the War Department, to supply the immediate needs of the beneficiaries, and to set apart in seceded territory tracts of land which had been either abandoned by the former owners or confiscated or purchased by the Government, said tracts being divided into forty-acre lots for the freedmen, who were to hold them for three years at an annual rental of not more than 6 per cent. of the appraised value of such lots in 1860, and who, during this term or at its expiration, were to be allowed to purchase them at the said valuation.

In order to aid the freedmen to take advantage of this opportunity to purchase land a number of philanthropic citizens throughout the North, headed by

Peter Cooper of New York City, organized a Freedmen's Savings and Trust Company, which was incorporated by Act of Congress, approved on March 3.

On the same day the President approved an act of Congress removing all disqualification of color in carrying the mails.

Freedmen's Aid Bill

Congress, December 20, 1864–March 3, 1865

The House bill, postponed from the previous session, came before both Houses on December 20, 1864, and a joint conference committee was appointed, consisting of Senators Charles Sumner [Mass.], Jacob M. Howard [Mich.], and Charles R. Buckalew [Pa.], and Representatives Thomas D. Eliot [Mass.], William D. Kelley [Pa.], and Warren P. Noble [O.].

On February 2, 1865, Mr. Eliot reported to the House of Representatives the bill drafted by the majority of the committee, which was to create an independent bureau of the Government for the administration of the affairs of the freedmen, with powers substantially those which were afterward granted.

Francis Kernan [N. Y.] opposed the bill, chiefly because of the military character of the commissioners, who were to exercise authority in certain instances over white persons.

> Sir, I submit that the experience of the last few years must have made it apparent to every gentleman here that these military commissions are characterized by a want of certainty as to the conviction of the guilty and the certainty of frequently convicting the innocent.

On February 9 the President laid before the House a memorial which he had received from officers of the private freedmen's aid societies of the country, and which asked that the Government establish the proposed bureau.

The work was too great for private charity, said the petitioners, besides, it was the Government's duty to undertake it.

It is the magnitude, not the nature, of the work that appalls us, and drives us to the Government for aid and support. We have found the freedman easy to manage beyond even our best hopes; willing and able to fight as a soldier; willing and able to work as a laborer; willing and able to learn as a pupil; docile, patient, affectionate, grateful, and although with a great tribal range of intellect from nearly infantile to nearly or quite the best white intelligence, yet with an average mental capacity above the ordinary estimates of it.

We have no doubts of the aptitude of the slave for freedom under any fair circumstances. But we see that his circumstances must inevitably be unfair under the best arrangements the Government can make, and that, independently of a great paternal care on the part of the Government, they will be so bad as to wring cries of shame and indignation from the civilized world, dishearten the friends and advocates of emancipation at home, and give new vitality to the disloyal suggestions of the slaveholders' allies in the North and West.

Has the Government any moral right to free the slave without seeing to it that, with every chain it breaks, the best within its power is done to keep the freedman from hankering after his master and his bondage, from feeling that his liberty is a burden, his life a curse, and his domestic affections even more fatal to his peace under our flag than beneath the plantation whip? Shall he hunger and thirst, shall he go naked and cold, shall he wander houseless and die unburied, shall his aged parents and young children be scattered where he cannot find them, and in unspeakable misery lay their bones together, too old and too young to contend with their fate upon the strange and distant soil to which fear and want have driven them? While anything remains undone within the power of the nation or the Government to do to alleviate or diminish this misery, the Christian principle and pity of our people will allow none who are responsible for it to rest in peace.

Let not this anxiety for a bureau of emancipation, as an expression and organ of government solicitude and care, be confounded with a disposition to overdo the care of the freedmen; to come between them and the natural laws of political economy; to substitute supervision and direction for their own latent energies and self-helpfulness. The utmost extent to which the ordinary principles of free light and labor can be applied to the blacks should be insisted on; the least possible done for them, the most possible expected of them; as little difference made as can be between them and other laborers, their

treatment always leaning rather to too little than too much aid and direction.

Gen. Robert C. Schenck [O.] argued for placing the bureau under an existing department, preferably the War Department, since its activities, which he considered to be chiefly directed to the present relief of the freedmen, would end with the war. He wished to add to the bill the features of a bill already before the House (submitted by the Committee on Military Affairs), which provided for the relief of destitute whites in the South as well as blacks.

William D. Kelley replied to General Schenck:

The view taken by the gentleman from Ohio is a very narrow one. It does not comprehend the scope of this bill or of the want for which it proposes to provide. He seems to desire to enlarge its purposes by embracing a class of people not contemplated by the bill, but proposes really to narrow them by reducing the functions simply to those of feeding exiled people or hungry refugees. The bill contemplates a temporary organization for systematizing the labor of the four million people who hold no other relation than life and nativity to our country or its institutions. They have no experience of life beyond the plantation, or, if they have, they have derived it as they have gone in gangs from one slave market to another, or from the market to the field of labor. They have not been permitted to know the cares and responsibilities of life.

We provide by national law for the care of the newly arrived immigrants, and why? Because many of them come to us in ignorance, and most of them without knowledge of our country, its laws, its habits. We protect them against the vices of our own people. We induct them, as it were, into the great temple of American civilization.

The system, or rather want of system, proposed by the gentleman from Ohio would, in my judgment, create and foster an immense body of paupers, while the aim of every provision in the bill of the committee of conference is to elevate into independent, self-sustaining, self-governing men and women the freedmen of the country. They hold no relation, I say, to our laws. They are not witnesses under the laws of the States in rebellion; they may not sue; they may be robbed of their earnings, and there is no court before which they can successfully

present or press their claims. They are, thanks to the infernal system of laws under which they have been reared, unable to read or write.

This bill would throw around them for a brief time the care of the Government, and see that contracts are fairly made with them and fairly enforced. It involves no large amount of patronage. It involves no cost. It proposes to add immensely to the revenue of the country by making lands that otherwise would lie waste bloom and bear, and to quicken the industry by giving the stimulant of a just reward to those who, without such care, would wander in vagrancy and pauperism, under the general provisions of the bill which the gentleman from Ohio would substitute.

Mr. Speaker, it is not often given to a legislature to perform an act such as we are now to pass upon. We have four million people in poverty because our laws have denied them the right to acquire property; in ignorance because our laws have made it a felony to instruct them; without organized habits because war has broken the shackles which bound them, and has released them from the plantations which were destined to be their world.

We are to organize them into society; we are to guide them, as the guardian guides his ward, for a brief period, until they can acquire habits and become confident and capable of self-control; we are to watch over them, and, if we do, we have, from their conduct in the field and in the school, evidence that they will more than repay our labor. If we do not, we will doom them to vagrancy and pauperism, and throw upon another Congress, and perhaps upon another generation, the duty or the effort to reclaim those whose hopes we will have blasted, whose usefulness we will have destroyed.

Mr. Eliot asked General Schenck to support the bill now and later offer one for the aid of the destitute whites, which bill, he promised, he would heartily support. He objected to placing the Freedmen's Bureau under the War Department because of the conflict which would ensue with the Treasury Department, which had authority over the abandoned lands. This authority would shortly pass to the War Department, and then the Bureau could be put under the control of the Department. There was urgent need, he said, to pass the bill at once.

The House agreed to the report by 64 yeas to 62 nays.

On February 13 Senator Sumner reported the bill of the majority of the committee to the Senate.

Garrett Davis [Ky.] objected to the military character of the bill, on the ground already advanced by Representative Kernan.

On February 21 Thomas A. Hendricks [Ind.] argued that the Bureau should logically be under control of the Interior Department, which had similar charge of the lands and well-being of the Indians.

James W. Grimes [Ia.] objected to the bill because it applied only to the rebel States. The 12,000 colored refugees in the District of Columbia ought also to come under its provisions. Furthermore, the destitute white loyalists in the South ought to have equal treatment with the negroes. He also feared that the unlimited power given to the commissioners to hire out the freedmen might some time be abused. He therefore advocated the bill of the Committee on Military Affairs in the House, which contained none of these objectionable features.

Samuel C. Pomeroy [Kan.] feared that an independent bureau might become a permanency and that the freedmen would never be thrown on their own resources but always be sustained by the Government. Thousands of colored and white refugees had come into his State, and he had observed that the former were more self-reliant than the latter, having learned in the bitter school of slavery readily to adapt themselves to hard conditions.

> I am looking for a speedy return of the colored population of this country to freedom and to taking care of themselves and adapting themselves to that condition; and all I think the exigencies of the case demand is some temporary expedient for a year or two.

William Sprague [R. I.] was opposed to the measure if the elective franchise could be granted to the negro.

When a man can vote he needs no special legislation in his behalf. The freedmen's department, as proposed by the bill under discussion, uncoupled with the rights and privileges of free men for the colored men, in my opinion, will illustrate history in the style that the Indian Bureau illustrates the beginning and end of the Indian. Sir, I am for perpetuating all races of men. I do not believe that it is necessary to secure the prosperity of one race that another should be destroyed. I fear that the bill under discussion will destroy the negro race in this country. I desire that those who advocate this bill will stop here and spend their time and talent in demanding for the negro race all the rights and privileges of freedom. Do this, and no freedmen's bureau is at all necessary.

Senator Sumner resisted postponement, as he feared that this meant killing the bill.

I am pained by this opposition. It is out of season. Sir, I am in earnest. Seriously, religiously, I accept emancipation as proclaimed by the President, and now, by the votes of both Houses of Congress, placed under the sanctions of constitutional law. But even emancipation is not enough. You must see to it that it is not evaded or nullified, and you must see to it especially that the new-made freedmen are protected in those rights which are now assured to them, and that they are saved from the prevailing caste which menaces slavery under some new alias; and this is the object of the present measure.

The Senator from Iowa renews now the objections which he made at an earlier stage of this legislation. So far as I understand his objection then and now, it is twofold: first, that the freedman is placed under constraint, and that he is not a freeman; and, secondly, that he is treated too much as an infant or a pupil. Now, I undertake to say that the objection in both these forms is absolutely inapplicable.

The freedman is treated in every respect as a freeman. Again and again in the bill his rights are secured to him. Thus, for instance, in the fourth section it is expressly provided that "every such freedman shall be treated in all respects as a freeman, with all proper remedies in courts of justice, and no power or control shall be exercised with regard to him except in conformity with law." In face of these positive words, so completely in harmony with the whole bill, it is vain to say that the freedman is not a freeman. Sir, he is a freeman just as much as the Senator himself, with a title derived from the

Almighty which no person can assail. When the Senator finds danger to the freedmen in this measure he consults his imagination, inflamed by these hostile sentiments which he has allowed himself to nurse.

But the Senator complains that the freedman is treated too much as an infant or a pupil. Let him point out the objectionable words. The freedmen, it is admitted, are under the general superintendence of the commissioner. But are we not all under the general superintendence of the police, to which we may appeal for protection in case of need? And just such protection the freedmen may expect from the commissioner, according to his power. The Senator himself is under the superintendence of the presiding officer of the Senate, whose duty it is to see that he is protected in his rights on this floor. But the presiding officer can do nothing except according to law, and the commissioner is bound by the same inevitable limitations.

But there are regulations applicable to the contracts of the freedman. Very well. Why not? To protect him from the imposition and tyranny of the dominant race it is provided that "no freedman shall be employed on any estate above mentioned otherwise than according to *voluntary contract,* reduced to writing and certified by the assistant commissioner or local superintendent." Mark the language, "voluntary contract." What more can be desired? But this is to be reduced to writing. Certainly, as a safeguard to the freedman and for his benefit. Then, again, the commissioners are to act as "advising guardians," in which capacity they are to "aid the freedmen in the adjustment of their wages." But do not forget that the freedman is a freeman, and if he does not need such aid or advice he may reject it—just as much as the Senator himself. Look at other clauses, and they will all be found equally innocent.

But there is the section originally introduced on the motion of the Senator from West Virginia [Waitman T. Willey], providing that "whenever the commissioner cannot otherwise employ any freedmen who may come under his care he shall, so far as practicable, make provision for them with humane and suitable persons at a just compensation for their service." Here again are tyranny and outrage carried to the highest point. But how? The commissioner is to act as an *intelligence office.* That is all; and everything that he does is to be "in conformity with law." This clause, even if it were in any respect ambiguous, must be ruled by those earlier words which declare that "every such freedman shall be treated in all respects as a freeman."

What more can be desired? With this rule as a touchstone, no freedman can suffer in his rights.

But the strange complaint is made that this measure is too favorable to the freedman, and, indeed, we have been told that something is needed for the whites. Very well; let it be done. I trust that an enlightened government will not fail to recognize its duties to all alike. Meanwhile, it is proposed that abandoned lands shall be leased to freedmen, and, if they are not able and disposed to take the lands for a twelvemonth, then they are to be leased to other persons. And why not? The freedmen for weary generations have fertilized these lands with their sweat. The time has come when they should enjoy the results of their labor at least for a few months. This war has grown out of injustice to them. Plainly to them we owe the first fruits of justice. Besides, this provision is essential as a safeguard against white speculators from a distance who will seek to monopolize these lands, with little or no regard to the freedmen. Ay, sir, it is too evident that it is essential as a safeguard against grasping neighbors who still pant and throb with all the bad passions of slavery.

Mr. President, the objections to the measure are vain. It is not hurtful to the freedman. It is not hostile to liberty. Its declared object is the good of the freedman. Its inspiration is liberty. Look at it as a whole or in detail and you will find the same object and the same inspiration. It only remains that the Senate should adopt it, and give a new assurance of justice to an oppressed race. In the name of justice, I ask your votes.

The Senate refused to postpone the bill by a vote of 13 yeas to 16 nays.

John B. Henderson [Mo.] opposed the bill.

It will, if adopted, instead of benefiting the freedmen of the South, be attended with consequences sufficient in time to reënslave them. Does the Senator from Massachusetts take into consideration the vast number of freedmen to be found in the Southern States—from three to three and a half millions? It is intended that the eighty-eight superintendents who are provided for in the bill shall go on to look into the condition of these negroes, and wherever they cannot make otherwise suitable provisions on the lands they may seize upon in the Southern States it will be their duty to look out homes for them, and put them with those parties that they see fit to place them under, for such compensation and for such a time as they may

desire. What will be the result of this? Will there be enough abandoned lands in the Southern States upon which to place the negroes?

Again, these commissioners and superintendents are to act as guardians, and they are to aid the freedmen in the adjustment of their wages and in the application of their labor. I do not profess to have been an anti-slavery man a great while, but the Senator from Massachusetts is certainly too old an anti-slavery man to have been the author of a proposition of this character. What was the old argument in favor of the institution of slavery? It was that the African race is not competent to self-government, that the negro is not able to take care of himself, that he needs a guardian. Though I am not a very old anti-slavery man, I can say to Senators here that I never believed a word of that argument. I believe to-day that if you turn loose the negroes of the Southern States and tell them to take care of themselves they will do it. There is no doubt about it. They will make a better contract for themselves than any white man who is their next friend will make for them. They are intelligent enough to do it; and, Mr. President, I tell you that, so far as my experience goes, they are as industrious as the white man. They take care of their wages as well as the white man does, and they are just as capable of making contracts.

Senator Sumner.—Allow me to say to the Senator, then, that this bill will have no application to such persons. No person need be aided in making a contract unless he stands in need of it. Every person under the bill will be as free as the Senator himself, just as free to make a contract to the right or the left as the Senator from Missouri. It is only if he stands in need of it that he may claim that aid.

Senator Henderson.—Let me call the Senator's attention to the fact that this is made a duty. If my proposition be true that these negroes can take care of themselves, why the necessity of this aid? Turn loose the negroes in this country and let them take care of themselves. Take the letter "d" out of that word "freedmen," leave them to be "freemen" and not "freedmen." I am opposed to keeping up the idea that these negroes when they have been turned free are to have guardians, supervisors, superintendents, and commissioners to take charge of them.

Henry S. Lane, of Indiana.—Overseers.

Senator Henderson.—Yes, "overseers," for they are nothing else.

Now, let us look at another provision of this bill. It is not made the duty of the negroes to take charge of the abandoned farms in the South. The Senator says that if these negroes can take care of themselves they will be just as free as I am. The Senator is mistaken. Why does he make it the duty of these officers to take charge of all the lands in the Southern States? Why not let the negroes go and take charge of them themselves? I ask the Senator now, and I ask for an answer, is it possible for a single negro to get possession of a home after the appointment of these superintendents unless it be their free will to put him upon the land?

I venture to predict that, after the machinery of this department is put into full operation in the Southern States, and this vast number of clerks and superintendents shall have been appointed, there will be a system of fraud and swindling that will astound the Senator from Massachusetts. Let me tell the Senator that the negro would be much better off without these superintendents. The negro knows how to cultivate the cotton lands of the South much better than the gentlemen who will be sent down there as superintendents, and who never saw a cotton plant in their lives.

But what else is there? If the lands and other property shall not be required for the freedmen, the officers may rent or lease them to other persons. It is also provided that all contracts of the freedmen are to be in writing. The Senator from Massachusetts knows very well that when a contract is once reduced to writing the writing itself is the evidence of the contract and no oral testimony can be taken against it. Does he not know that nine-tenths of the negroes of the Southern States cannot read and write? And if these superintendents are permitted to superintend every contract and to make contracts for the negro, as they will do, does he not know that it will be utterly impossible for the negro in any court of justice anywhere to introduce testimony outside of the contract? These contracts will be made by dishonest superintendents again and again in order to benefit themselves and to rob the negro of the earnings of his labor. Such will be the fact; and the Senator from Massachusetts in less than two years from to-day will discover that what I say is true.

On February 22 John P. Hale [N. H.] spoke. He objected to letting the negroes have the first choice of the abandoned lands, thus leaving the destitute white men without relief at a time when they most needed it.

If at any time one of your officers under this bill may feel inclined to make some provision for some loyal, suffering white person, though he may have got the contract nearly consummated by which the outcast and the refugee is to obtain a place of shelter for himself, his wife, and his little ones, if a colored man comes up and says he wants it, your officer's hands are tied and he cannot move for the benefit of the white refugee.

I confess that I do not hold to that sort of philanthropy. I think I go as far as Christianity and humanity require me to go when, in cases of this kind, I let the white and the black stand together; but I am unwilling to have placed by my vote upon the statutes of this country a provision which would actually forbid our officers from extending any relief, even the slightest, to a white refugee, provided there was a colored person who wanted it.

Henry S. Lane [Ind.] opposed the bill, reiterating the arguments that had been presented by former opponents of the measure.

I am in favor of temporary relief and temporary support to poor colored persons and equally to the white refugees. But I have an old-fashioned way of thinking which induces me to believe that a white man is as good as a negro if he behaves himself. [Laughter.] Now, sir, the report of this committee of conference goes upon the supposition that the negro is wholly incompetent to take care of himself. The reason assigned for slavery by slave masters for the last fifty years has been that these people are helpless, utterly unable to take care of themselves; that they have been under the guardianship of their masters so long that you cannot trust them with their own interests. As long as you keep them under the guardianship either of their masters or of overseers to be appointed under this bill, so long will they be helpless and unable to take care of themselves. As long as you hold them up they will never stand alone; but the very moment you make them freemen and secure their rights in the courts of justice, I believe they will be fully competent to take care of themselves. This proposition of the committee of conference only proposes a change of masters, under the provisions of the ninth section. You appoint commissioners who have a right to take possession of the farms, lease them to whomsoever they please, and then they may hire out these negroes at any price they shall agree upon between themselves and the lessees of the lands. That is what I under-

stand to be the provisions of the bill, and, under such provisions, it would introduce, in my opinion, a system of fraud and swindling unheard of in the history of the world. You give these poor creatures to the kind protection of broken-down politicians and adventurers, and decayed ministers of the gospel, and make them overseers to make fortunes out of these poor creatures, and they will treat the negroes, in my opinion, under this bill, far more cruelly than their masters under the old slave system did.

I am opposed to the whole theory of a freedman's bureau. I would make them free under the law; I would protect them in the courts of justice; if necessary, I would give them the right of suffrage, and let loyal slaves vote their rebel masters down and reconstruct the seceded States; but I wish to have no system of guardianship and pupilage and overseership over these negroes.

Garrett Davis [Ky.] objected to the bill because it would perpetuate the vicious system of trading in cotton already inaugurated by Northern men in the subjugated parts of the South.

There is a delusive intimation in the proposition that it is to be made self-supporting; but any man who is acquainted with the South, with free negroes, and with the general subject of the bill knows that for years and years at least this system never can be worked so as to become self-supporting.

But the particular objection I have to it is, in the first place, that every assistant commissioner and every superintendent of freedmen and of abandoned lands in all the districts will be a secret partner of every man to whom he lets these lands upon lease and to whom he assigns any portion of the freedmen for their cultivation. No guards or provisions which can be thrown around the system by legislation will ever prevent it from degenerating into that abuse. Here, then, will be from twenty-two to twenty-five assistant commissioners and from fifty to sixty local superintendents, with their retinue of clerks and other officers, who are by this bill required to be sustained by the military power of the United States. That will give them energy and give them strength by which all of their schemes and all of the policy which they will bring into this new freedmen's department shall be rigorously executed at the point of the bayonet.

Mr. President, what will be the consequences? These are

gentlemen in the Senate who have visited Southern plantations. They know that the negro cabins are huddled together in the form of villages around the mansion of the owner, and the slaves who have been in the habit of laboring in the fields come there at night for rest and depart in the morning to their labor. This measure proposes that lands to the quantity of fifty acres shall be let by the commissioner and the assistant commissioners to the freedmen. Where will a freedman find a house in which to shelter himself and his family upon fifty acres of a vast cotton estate? There are no such houses except in these villages that are built up by the owner of the estate around his mansion. They are not distributed and located so as to be let in tenements of fifty acres. In addition to that, where will the freedman get the capital to buy his horse or his oxen and his plow and other agricultural implements to put his crop of cotton or corn in the ground? All these require capital—capital far beyond the ability of the freedman to command—and this fact renders the scheme impracticable so far as it professes to be for the benefit of the freedman.

The inevitable result will be that the freedman will lease no land. He will not be able to lease and to cultivate land. He will not be able to purchase equipments of horses and agricultural implements that will be necessary for its cultivation. Then he must fall into general line and become simply a laborer, to be hired by the assistant commissioners or by the superintendents, and to be hired to some man with whom they are secretly in partnership, with whom they are to share the profits and the produce of the freedman's labor from these abandoned lands.

In the language of the honorable Senator from Indiana, it will be but changing the form of slavery. There will be the name of freedman attached to the negro, but he will be subject to be taken by the assistant commissioners and the superintendents to be hired out; and, if there is any obstacle in the way of the performance of this duty, they are to be backed by the military power of the United States. The consequence will be that a few favorites and secret partners of these Government officials, corrupted by cotton, will obtain leases of all the cotton lands in large bodies.

When their business will be to hire the freedmen to cultivate the cotton fields the profits of the culture of which they are to share, is it not inevitable that there will be vast abuse in the discharge of the duty of hiring the freedmen by these officials? They will gather them together, they will present this

law to the freedmen, they will show that the law itself authorizes them to command the freedmen to assemble upon any plantation that they may designate, to go into the service of any lessee they may name, at any wages they may agree upon, and the freedman, awed and intimidated by the law, becomes submissive and entirely obedient to the mandate of the commissioners and superintendents. He becomes as tractable, ay, more tractable and obedient than he ever was to his former master or overseer, because here is the power that has given to him the name of freedman sending its official agents into the region of country where he lives, exhibiting the law which authorizes those agents to assemble and to command the attendance and the rendezvous of the freedmen at any place they may designate, and provides that the freedmen shall labor according to their mandate at such prices as they may agree upon. The consequence will be inevitably that the negro will labor for the white man, will labor for the lessee in connection and as a secret partner of the superintendents and of the assistant commissioners. The whole scheme will become a system of corruption, of plunder, of fraud and oppression upon the freedmen to enrich the white adventurers who go into the business of discharging the duties of commissioners and superintendents.

Sir, I cannot doubt that, if the condition and relations of parties were changed, if the Democratic party was now in power and was wielding the vast forces of this Government, and was endeavoring to enforce upon the Republican party out of power the identical principles and measures which the latter has been so swift to impose upon the whole country, the Black Republican party would rise as one man, with one heart, and with indomitable energy, and oppose all this policy and these measures which they are now seeking to fasten upon the country.

By a vote of 14 yeas to 24 nays the report of the committee was not concurred in.

Another joint conference committee was appointed, consisting of Senators Henry Wilson [Mass.], James Harlan [Ia.], and Waitman T. Willey [W. Va.], and Representatives Robert C. Schenck [O.], George S. Boutwell [Mass.], and James S. Rollins [Mo.]. It brought forward on February 28 the bill in its final form. Both Houses passed the bill on March 3, the vote being taken *viva voce*. President Lincoln approved the act on the same day.

Edwin M. Stanton, Secretary of War, selected as the commissioner of the bureau Gen. Oliver O. Howard, whose character was well indicated by the appellation generally given him of "the Christian Soldier." James G. Blaine, in his "Twenty Years of Congress," says of his administration of the bureau:

He was subjected to unreasonable fault-finding, often to censure and obloquy; but throughout the whole he bore himself with the honor of a soldier and the purity of a Christian—triumphantly sustaining himself throughout a Congressional investigation set on foot by political malice, and confronting with equal credit a military inquiry which had its origin in the jealousy that is often the bane of army service.

In the administration of the freedmen's bureau it had been found that its effectiveness was hampered by lack of power on the part of its officers. Accordingly, on January 12, 1866, Lyman Trumbull [Ill.] introduced in the Senate from the Judiciary Committee a supplementary act to enlarge the powers of the bureau.

The President of the United States, through the war department and through the commissioner of the bureau, was authorized to extend military jurisdiction and protection over all employees, agents, and officers of the bureau; and the Secretary of War was authorized to issue such provisions, clothing, fuel, and other supplies, including medical stores, and to afford such aid as he might deem needful for the immediate and temporary shelter and supply of destitute refugees and freedmen, their wives and children, under such rules and regulations as he might direct. The President was also authorized to reserve from sale or settlement under the homestead and preëmption laws public lands in Florida, Mississippi, and Arkansas, not to exceed three millions of acres of good land in all, for the use of the freedmen, at a certain rental to be named in such manner as the commissioner should by regulation prescribe; or the commissioner could purchase or rent such tracts of land in the several districts as might be necessary to provide for the indigent refugees and freedmen depending upon the Government for support.

It was further provided that wherever in consequence of any State or local law any of the civil rights or immunities belong-

ing to the white persons, such as the right to enforce contracts, to sue, to give evidence, to inherit, purchase, lease, sell, hold, or convey real and personal property were refused or denied to freedmen on account of race or color or any previous condition of slavery or involuntary servitude, or whenever they were subjected to punishment for crime different from that provided for white persons, it was made the duty of the President, through the commissioner, to extend military jurisdiction and protection over all cases affecting persons against whom such unjust discriminations were made. But the jurisdiction was to cease "whenever the discrimination on account of which it is conferred shall cease," and was in no event to be exercised in any State "in which the ordinary course of judicial proceeding has not been interrupted by the rebellion, nor in those States after they shall have been fully restored to their constitutional relations to the United States, and when the courts of the State and of the United States, within their limits, are not disturbed or stopped in the peaceable course of justice."

This bill was brought at the height of the contest between President Johnson and Congress over reconstruction of the Southern States, and partisan spirit flamed high in the ensuing debate, which covered not only every phase of the question of negro rights, but the constitutional aspect of Reconstruction as well. Nearly every Senator of prominence spoke upon the bill, and most of them with marked ability. However, since the arguments are presented in other debates on reconstruction this one is here omitted.

The bill was passed by the Senate on January 25, 1866, by a vote of 37 to 10.

When the bill reached the House it was referred to the Select Committee on Freedmen's Affairs (Thomas D. Eliot, of Massachusetts, chairman). It was promptly reported and came to a vote on February 6, when it passed by 136 yeas to 33 nays, a strictly partisan vote.

The most notable speech on the bill in the House was one delivered on February 1 by Ignatius Donnelly [Minn.], who possessed an original mind that ran along lines out of the usual grooves of Congressional thought. Looking beyond the satisfaction of the material needs of the freedmen and the grant to them of civil and

political rights, he insisted that the negro needed over and above these *education,* to "fit him to protect himself in that not distant day when the bureau must necessarily be withdrawn." It is true that he did not foresee the special kind of education—industrial—which later such institutions as those at Hampton, Va. (founded 1868), and Tuskegee, Ala. (founded 1881), were established to promote among the negroes (and, in the former case, among the Indians also), but his speech aided in turning the attention of Congress and the country to the general need for negro education, and from this there sprang up inevitably in the minds of practical philanthropists the particular direction which such instruction should take.

Mr. Donnelly offered an amendment, providing "a common-school education to all refugees and freedmen who shall apply therefor." It was not adopted.

Education and Citizenship

Ignatius Donnelly, M. C.

Sir, this is a new birth of the nation. The Constitution will hereafter be read by the light of the rebellion; by the light of the emancipation; by the light of that tremendous uprising of the intellect of the world going on everywhere around us. He is indeed fearfully cramped by the old technicalities who can see in this enormous struggle only the suppression of a riot and the dispersion of a mob. This struggle has been as organic in its great meanings as the Constitution itself. It will leave its traces upon our Government and laws so long as the nation continues to exist.

The measure under consideration should not awaken opposition. It is right and necessary. So long as oppression continues, the Government must intervene in behalf of justice and liberty, and through what machinery can it better intervene than through this bureau?

But, sir, even more than all this is needed. What, let me ask, is the condition of the *mind* of the South?

Gentlemen demand that the ballot shall be universal. They must go further; they must insist that capacity properly to direct the ballot shall be likewise universal.

Said Washington:

"In proportion as the structure of government gives force to public opinion it is essential that public opinion should be enlightened."

Said Jefferson, in the famous ordinance of 1787:

"Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be forever established."

Says Horace Mann:

"If Republican institutions do waken up unexampled energies in the whole mass of the people, and give them implements of unexampled power wherewith to work out their will, then these same institutions ought also to confer upon that people unexampled wisdom and rectitude." . . . "I know we are often admonished that without intelligence and virtue as a chart and a compass to direct us in our untried political voyage we shall perish in the first storm; but I venture to add that without these qualities we shall not wait for a storm—we cannot weather a calm. If the sea is as smooth as glass, we shall founder, for we are in a stone boat."

It is not necessary to demonstrate the importance of education. The common sense of mankind approves it; the success of our nation attests it; a million happy homes in our midst proclaim it. Education has here fused all nations into one; it has obliterated prejudices; it has dissolved falsehoods; it has announced great truths; it has flung open all doors; and thank God, it has at last broken all the shackles in the land! The rebellion sprang from popular ignorance; its suppression came from popular education. When the Englishman described the North as a land "where every man had a newspaper in his pocket," he touched at once the vital point of our greatness and the true secret of our success.

Let the great work go on. Its tasks are but half completed. Let it go on until ignorance is driven beyond our remotest borders. This is the noblest of all human labors. This will build deep and wide and imperishable the foundations of our Government; this will raise up a structure that shall withstand the slow canker of time and the open assaults of violence. The freedom of the people resting upon the intelligence of the people! Who shall destroy a nation founded on this rock?

The one great error of our country has been that education was not from the very first made a matter of the State, and as essential to the citizen as liberty itself. Education means the intelligent exercise of liberty, and surely without this liberty is a calamity, since it means simply the unlimited right to err. Who can doubt that if a man is to govern himself he should

have the means to know what is best for himself, what is injurious to himself, what agencies work against him and what for him? And the avenue to all this is simply education. Suffrage without education is an edged tool in the hands of a child—dangerous to others and destructive to himself.

Now, what is the condition of the South in reference to all this?

I assert that it is such as would bring disgrace upon any despotism in Christendom.

The great bulk of the people are rude, illiterate, semi-civlized; hence the rebellion; hence all the atrocious barbarities that accompanied it.

The number of ignorant is indicated by the proportion unable to read and write; indicated, I say, but not fully shown, because, of the practically ignorant, of those who read neither books nor newspapers, and are thus cut off from acquiring information through its ordinary channels, the proportion who have never learned their letters or to write their names may be small indeed.

I repeat, the condition of the South in this respect would be shameful to any semi-civilized people, and is such as to render a republican government, resting on the intelligent judgment of the people, an impossibility.

I appeal to the revelations of the census.

My statistics do not include the former slaves, but the white people of the South and the few freed negroes found among them in 1860.

It appears from the census that the adult male white and free negro population of the United States, in 1860, over twenty years of age, who could not read and write was but little short of half a million. In other words, that in the last presidential election, if the entire population of the United States had voted, half a million votes would have been cast by men who could not read and write.

When we recollect that upon our presidential elections depend the great interests and the life of the country, and remotely the cause of all mankind, we may well stand appalled before this vast force of half a million ignorant men deciding the destinies of the world.

But if we look exclusively at the Southern States we find still greater cause for surprise and alarm.

The census shows that in 1860 in the seven Southern States of Delaware, Virginia, North Carolina, Tennessee, Alabama, Arkansas, and Kentucky there were 140,036 illiterate males,

over 20 years of age, able neither to read nor to write. In the same year 715,551 votes were cast for presidential electors. Thus about one man in five was illiterate.

If, however, we add to each man entirely illiterate one other who, while able to read and write his name, derives no practical advantage from these mere rudiments of education in forming his opinions, we will find the total to be more than one-third of the total vote.

The total number of illiterate in the Southern States in 1860, over twenty years of age, exclusive of the then slaves, was 545,177. In these, with the comparatively ignorant associated with them, we see the upholders of the rebellion at the ballot box and in the field. Without these it could never have been inaugurated, or if inaugurated could never have maintained itself for six months against the mighty levies of the Union.

But, it may be said, these evils will correct themselves. The testimony is all the other way:

From 1840 to 1860, a period of twenty years, the number of illiterate over twenty years rose from 549,693 to 1,218,311; in other words, an increase of considerably more than one hundred per cent.!

At the same ratio of growth, in 1920 it would amount to the enormous total of 12,596,688.

Who will pretend that with such a mass of ignorance the Government could survive? It would be buried in the most disgraceful anarchy the world has ever seen.

But, Mr. Speaker, even these appalling figures do not tell the whole story. These figures do not include the then slaves, now freedmen. We must add to the ignorant population of the South the 4,000,000 blacks just released from slavery. Giving these their natural increase, in 1920, when it is supposed that the total population will be 120,000,000, the illiterates will be 18,591,500, one-fifth of the entire number and nearly one-third of the entire vote.

I trust, then, that no gentleman will doubt the propriety of the amendment I have submitted. We are interfering in behalf of the negro; let us interfere to educate him. We thus strike out at one blow a large proportion of the ignorance of the South; we shame the whites into an effort to educate themselves, and we prepare thus both classes for the proper exercise of the right of suffrage.

Nor shall it be said that the ignorance revealed by these statistics is an exotic, that it results from foreign immigration. While it is true that in the North a large proportion of the

illiterate are from foreign lands, in the South the reverse is the case. In North Carolina, in 1860, the illiterate persons of native birth were 74,877, while those of foreign birth were but 100.

We find that the Southern States have a population about equal to the Middle and Western States combined, while the number of illiterate in the former is 545,177, as against 241,854 in the latter; and this not including the vast number of illiterate freedmen in the South, who would make the disproportion still greater. So that the South outnumbers in illiterate the most unfavorable portions of the North more than two to one.

Who can fail to see in this vast disproportion the cause of the rebellion? In the language of Henry Ward Beecher:

> "As upon the coast you can trace the line between the dark and treacherous sea on the one hand, and the firm and trusty land on the other, by the row of light-houses; so you can mark between the deep, damnable wickedness of treason and the supernal luster of patriotism by the line of schoolhouses."

Now, Mr. Speaker, I put it to this House, and through it to the whole people of the country, North and South, whether this state of things is to continue. This is not a political question. It rises above the level of politics and directly affects the welfare of all the people and the life of the nation itself.

If, sir, this enormous growth of ignorance is to continue we can meet with no fate save that which has overtaken too many of the free governments of the world.

We cannot count upon our representative system. The struggle we have gone through shows too plainly that reforms must originate with the people. The people may be converted, the representatives never. They are precisely what the people behind them are, and no more. If the people are ignorant, they will have demagogues for their representatives.

The preservation of this Government through the many dangers that have encompassed it since its birth I look upon as the marvel of modern times. The hand of God is plainly visible in it. Let us do our part now to prepare the way for the mighty future that awaits us. There is no loftier task on earth.

We cannot leave the population of the South, white or black, in the condition they are now in. We must educate them. When you destroy ignorance you destroy disloyalty; for what man with a free, broad scope of mind, and with a knowledge of all the facts, can fail to love this just, benevolent, and most gentle Government?

Let us turn, then, to the next consideration. What chance

is there for the black man in the South without the intervention of this bureau?

We have liberated four million slaves in the South.

It is proposed by some that we stop right here and do nothing more. Such a course would be a cruel mockery.

These men are without education, and morally and intellectually degraded by centuries of bondage. They have neither the arts nor the knowledge nor the power of combination to protect themselves against the superior race from whose grasp they have just been forcibly wrested. That race did not willingly yield them up; to abandon them to their former masters would be to consign them once more to inevitable slavery. The master would have every inducement to reënslave his former bondman, and not a single barrier would stand in his way.

But it may be said the amendment to the Constitution prohibiting slavery would protect them. Sir, a grand abstract declaration, unenforced by the arm of authority, is not a protection.

Slavery consists in a deprivation of natural rights. A man may be a slave for a term of years as fully as though he were held for life; he may be a slave when deprived of a portion of the wages of his labor as fully as if deprived of all; he may be held down by unjust laws to a degraded and defenceless condition as fully as though his wrists were manacled; he may be oppressed by a convocation of masters called a legislature as fully as by a single master. In short, he who is not entirely free is necessarily a slave.

What has the South done for the black man since the close of the rebellion?

Let us examine the black codes of the different States adopted since that time.

In South Carolina it is provided that all male negroes between two and twenty, and all females between two and eighteen, shall be bound out to some "master." The adult negro is compelled to enter into contract with a master, and the district judge, not the laborer, is to fix the value of the labor. If he thinks the compensation too small and will not work, he is a vagrant, and can be hired out for a term of service at a rate again to be fixed by the judge. If a hired negro leaves his employer he forfeits his wages for the whole year.

The black code of Mississippi provides that no negro shall own or hire lands in the State; that he shall not sue nor testify in court against a white man; that he must be employed by a master before the second Monday in January, or he will be

bound out—in other words, sold into slavery; that if he runs away the master may recover him and deduct the expenses out of his wages; and that if another man employs him he will be liable to an action for damages.

The black code of Alabama provides that if a negro who has contracted to labor fails to do so he shall be punished with damages; and if he runs away he shall be punished as a vagrant, which probably means that he shall be sold to the highest bidder for a term of years; and that any person who entices him to leave his master, as by the offer of better wages, shall be guilty of a misdemeanor, and may be sent to jail for six months; and, further, that these regulations include all persons of negro blood to the third generation, though one parent in each generation shall be pure white; that is, down to the man who has but one-eighth negro blood in his veins.

The Mississippi legislature passed a law prohibiting negroes from acquiring lands or real estate. This was promptly overruled by the United States authorities. Whereupon the legislatures of Mississippi and Alabama passed laws making the owner of the property, who rents or leases a negro a house or land, responsible for everything he buys—his meat, his bread, his doctor's bill, and even his taxes. Of course no one will rent a black man a house or lease him land under such a law; and of course also the negro will have to be driven out upon the highway and become a vagrant, and thus become subject to the vagrant law.

The black code of Tennessee provides that the vagrant negro may be sold to the highest bidder to pay his jail fees; and to make sure that he be kept a vagrant no housekeeper shall harbor him; his children may be bound out against his wish to a master by the county court; if his master fails to pay him he cannot sue him nor testify against him. It further provides that colored children shall not be admitted into the same schools with white children, while it makes no provision for their education in separate schools.

The black code of Virginia provides that any man who will not work for "the common wages given to other laborers" shall be deemed a vagrant; the masters have formed combinations and have put down the rate of wages to the freedmen below a living price; the negro refusing to work for these wages is seized as a vagrant, sold to service "for the best wages that can be procured" for three months; if he runs off he shall work another month with ball and chain for nothing.

It is true General Terry has declared that the order shall not

be enforced; but of what avail will this be when the military are withdrawn and Virginia is reconstructed?

All this means simply the reëstablishment of slavery:

1. He shall work at a rate of wages to be fixed by a county judge or a legislature made up of white masters, or by combinations of white masters, and not in any case by himself.

2. He shall not leave that master to enter service with another. If he does he is pursued as a fugitive, charged with the expenses of his recapture, and made to labor for an additional period, while the white man who induced him to leave is sent to jail.

3. His children are taken from him and sold into virtual slavery.

4. If he refuses to work he is sold to the highest bidder for a term of months or years, and becomes in fact a slave.

5. He cannot better his condition; there is no future for him; he shall not own property; he shall not superintend the education of his children; neither will the State educate them.

6. If he is wronged he has no remedy, for the courts are closed against him.

Said a Georgian the other day:

> "The blacks eat, sleep, move, live, only by the tolerance of the whites, who hate them. The blacks own absolutely nothing but their bodies; their former masters own everything, and will sell them nothing. If a black man draws even a bucket of water from a well, he must first get the permission of a white man, his enemy. If he sleeps in a house over night, it is only by the leave of a white man. If he buys a loaf of bread, he must buy of a white man. If he asks for work to earn his living, he must ask it of a white man; and the whites are determined to give him no work, except on such terms as will make him a serf and impair his liberty."

This, then, is slavery, less the protection which the master formerly afforded his chattel. The slave now has a mob for his master. General Schurz says, in his admirable report:

> "The emancipation of the slaves is submitted to only in so far as chattel slavery in the old form could not be kept up. But although the freedman is no longer considered the property of the individual master, he is considered the slave of society; and all independent State legislation will show the tendency to make him such. The ordinances abolishing slavery, passed by the conventions under the pressure of circumstances, will not be looked upon as barring the establishment of a new form of servitude."

The enemies of the black man, those who opposed his liberation, now point to him and say, "See the condition to which you

have reduced him. He is worse off than before. His race is perishing from the face of the earth under the innumerable miseries which liberty has inflicted upon it."

For one, with the help of Almighty God, I shall never consent to such cruel injustice. Having voted to give the negro liberty, I shall vote to give him all things essential to liberty.

If degradation and oppression have, as it is alleged, unfitted him for freedom, surely continued degradation and oppression will not prepare him for it. If he is not to remain a brute you must give him that which will make him a man—opportunity. If he is, as it is claimed, an inferior being and unable to compete with the white man on terms of equality, surely you will not add to the injustice of nature by casting him beneath the feet of the white man. With what face can you reproach him with his degradation at the very moment you are striving to still further degrade him? If he is, as you say, not fit to vote, give him a chance; let him make himself an independent laborer like yourself; let him own his homestead; let the courts of justice be opened to him; and let his intellect, darkened by centuries of neglect, be illuminated by all the glorious lights of education. If after all this the negro proves himself an unworthy savage and brutal wretch, condemn him, but not till then.

He must have this opportunity. He cannot remain in an amphibious condition between liberty and slavery. He must be either full slave or full freeman; he must either be master of himself or the servant of another.

Do not believe the delusive hope uttered by some that the race which has all the privileges will some day willingly divide them with the race that has none. The world's history tells no such story. The Old World's royalties and aristocracies rest upon ancient conquests; and yet how unwilling, even after centuries have passed, have the victors ever been to permit the vanquished to rise! Let the wretched condition of the masses in those countries at the present day testify.

Is the right of suffrage necessary to the negro?

The right to vote is the right of self-protection, through the possession of a share in the Government. Without this a man's rights lie at the mercy of other men who have every selfish incentive to rob and oppress him. This is the great central idea of a republican government. The absence of this is the source of all despotism. I would ask, what white man would consider himself safe without the right to vote, especially if the Government was exercised exclusively by a hostile race?

What shield and safeguard can the negro have if it be not the right to vote? To whom can he appeal when the highest earthly tribunals are filled by his enemies?

No man can rest with safety upon the mercy and generosity of any other man. The law protects the ward from its guardian, the child from its parent, the wife from her husband, nay, even the dumb brute from its owner. Can we, then, as the Representatives of a free people, consign a helpless race to the mercy of its hereditary oppressors? Can we, in the heart of a free government, permit the erection of such a strange and abnormal system of despotism?

Mr. Speaker, it is as plain to my mind as the sun at noonday that we must make all the citizens of the country equal before the law; that we must break down all walls of caste; that we must offer equal opportunities to all men.

Injustice is the mother of revolutions. In no case has rebellion raised its head in the midst of equal laws; for what more can a man ask than equality? But I challenge the historian to point to a single community where unjust laws have not sooner or later given birth to revolution; to the efforts of one class to perpetuate and of the other to resist injustice.

If you give the negro an equal opportunity with the white man he becomes perforce a property-holder and a law-maker, and he is interested with you in preserving the peace of the country. If you hand him over to oppression, if you deprive him of all hope, if you debase him into a brute, you can expect nothing from him but poverty, turbulence, and wretchedness. If, then, your object, if the object of all government, is to advance the prosperity of the people, can you do so by ruining one-eighth of the entire population?

The true issue before the South is justice or anarchy. We must save the South from herself. The negroes now know themselves to be freemen. They may be made savages, but never again slaves. The cruel, heartless course the South seems bent on pursuing will sooner or later set the land aflame with insurrection. And in that day are we ready, we, the Christian people of the North, to hold down with our armies the poor writhing wretches who will tell us that their title deeds of liberty bear our superscription; and who will fling into our faces while we are manacling them the sacred promises of the proclamation of emancipation? Never! never! This thing cannot be. Our own hearts would revolt at it; the world would cry us: Shame! The name of American would become an epithet of contempt in the mouth of all mankind.

We must hold our faith. We made great vows to God when the fury of the tempest smote us, and night and darkness seemed settling down upon our frail bark forever. Let us not, like the drunken sailors of the Mediterranean, abandon those vows amid the profligacy of the harbor. It becomes a great people to hold its faith as the most sacred thing beneath the wide canopy of the heavens.

If it is, then, true that we must make the freedmen fully free, and, if the right of suffrage is necessary to this freedom, then it is equally necessary that education should accompany freedom.

Pass the amendment I have proposed, and the Freedman's Bureau will not only protect the negro now but give him the means of self-protection hereafter. Without this the ballot is a useless, perhaps a pernicious, instrument in his hands. Without this your bureau will be but a temporary relief, and in a short time the negro will relapse into oppression. Educate him, and he will himself see to it that common schools shall forever continue among his people; and in doing him an act of justice you will increase the safety of the nation forever.

Let not the objection of expense be made. No outlay is too great which is necessary to the safety of the people, since in that is involved all the wealth of the country. It is a madman's economy to save money by rendering the people unfit for self-government and then lose all in the misgovernment which is sure to follow.

Universal education must go hand in hand with universal suffrage. Either alone will be unavailing; together they will create the mightiest government and the ablest race the world has ever known.

If you pass the amendment I have offered, the Freedman's Bureau becomes an instrumentality of more good than was ever before achieved in the world by any merely human agency. Its influence will be greater than even Jefferson's famous ordinance, which gave to freedom the Northwestern Territory. And who shall count the results yet to flow from that great measure? A thoroughly educated negro population in the South means a white population forced into education through mere shame; it means an intelligent and, necessarily, a loyal people; it means industry, prosperity, morality, and religion everywhere; a land rejoicing in wealth and glorious with liberty.

The bill was vetoed by President Johnson on February 19 for the following reasons: (1) that it abolished

trial by jury in the South, and substituted trial by court-martial; (2) that this abolition was apparently permanent, not temporary; (3) that the bureau was a costly and demoralizing system of poor relief; and (4) that Congress had no power to apply the public money to any such purpose in time of peace.

The Senate voted upon the veto the day after it was received, 30 yeas to 18 nays, less than the two-thirds majority required to override it.

A mass meeting was held in Washington on Washington's birthday, to approve the President's action. The meeting adjourned to the White House, where the President made a long and abusive harangue against his Republican opponents, whom he arraigned by name. Saying that he had "fought traitors and treason in the South," he let it be inferred that he was in a similar contest in the North and would wage it with equal fearlessness. Beginning to recount his own career from humble beginnings, he was interrupted by a voice from the crowd reminding him that he had been a tailor, whereupon he said he had not done "patchwork" then, nor did he propose to do it now. He "wanted the whole suit," and it was not his practice to fail to perform what he had pledged himself to do. He said that a Congressman had said that he, the President, ought to be put out of the way of the bill. Interpreting this as a threat of assassination, he asked:

> "Does not the murder of Lincoln appease the vengeance and wrath of the opponents of this Government? Are they still unslaked? Do they still want more blood? I am not afraid of the assassin attacking me where a brave and courageous man would attack another. I dread him only when he would go in disguise, his footsteps noiseless. If it is blood they want let them have courage enough to strike like men."

Later in the session (May 22) a bill was introduced in the House of Representatives by Thomas D. Eliot [Mass.] from the Select Committee on Freedmen's Affairs, continuing in force, with amendments, the act in existence. It was so framed as to escape the objections

which had caused Republican Senators to sustain the President's veto of its predecessor. The most important changes were the limitation of the act to two years and the reduction of the sweeping judicial powers accorded the bureau. It also contained a new provision for applying the property of the ex-rebel States to the education of the freedmen—evidently a result of Mr. Donnelly's speech. It was not extensively debated, and came to a vote in the House on May 29, when it was passed—yeas 96, nays 32. The Senate passed it, *viva voce,* on June 26. Owing to the press of other business it did not reach the President until the first week of July. He vetoed it on the 16th for the same general grounds given in his first veto. On the same day it was passed over the veto: in the House by 104 yeas to 33 nays, and in the Senate by 33 yeas to 12 nays.

At the expiration of the statute, in June, 1868, the bureau was continued by law for one year longer in unreconstructed States. August 3, 1868, a bill was passed over the veto, providing that General Howard should not be displaced from the commissionership, and that he should withdraw the bureau from the various States by January 1, 1869, except as to its educational work, which did not stop until July 1, 1870. The collection of pay and bounties for colored soldiers and sailors was continued until 1872 by the bureau, when its functions were assumed by the usual channels of the War Department. Total expenditures of the Freedmen's Bureau, March, 1865–August 30, 1870, were reported at $15,359,092.27.

CHAPTER VIII

Suspended Sovereignty or State Suicide?

[RECONSTRUCTION OF REBELLIOUS STATES]

Message and Proclamation of President Lincoln on Amnesty and Reconstruction—Henry Winter Davis [Md.] Moves in the House of Representatives a Resolution Guaranteeing a "Republican Form of Government" to the States in Rebellion—Debate: in Favor, Mr. Davis, Fernando C. Beaman [Mich.]—Resolution Is Referred to a Special Committee, Which Reports a Bill for Reconstructing Governments of These States—Debate on the Bill: in Favor, Nathaniel B. Smithers [Del.], Thomas Williams [Pa.], M. Russell Thayer [Pa.], Ignatius Donnelly [Minn.], Thaddeus Stevens [Pa.], Sidney Perham [Me.], James M. Ashley [O.], Daniel W. Gooch [Mass.], William D. Kelley [Pa.], George S. Boutwell [Mass.]; Opposed, James C. Allen [Ill.], Charles Denison [Pa.], Myer Strouse [Pa.], James A. Cravens [Ind.], Francis D. Kernan [N. Y.], Nehemiah Perry [N. J.], Fernando Wood [N. Y.], Samuel S. Cox [O.], George H. Pendleton [O.]; the Bill Is Passed by House and Senate—The President Refuses to Sign It, and Gives His Reasons in a Proclamation, in Which He Also Sustains Reconstruction by Executive Authority—Protest of Senators Davis and Benjamin Wade [O.]—Reconstruction Bill Proposed in Next Session of Congress; It Is Tabled—Speech of President Lincoln on Reconstruction of Seceded States: "At Home Again in the Union."

THE subject of reconstruction of the seceded State governments was, during the Civil War, considered almost entirely in its constitutional aspect, and the debates thereon at that time properly belong to Volume V, treating of State Rights. However, after the war, the question of the maintenance of Civil Rights, especially of the negro, became the crucial issue in setting up loyal State governments in the South. That the subject may not be divided in treatment, all the debates upon reconstruction are presented in the present volume.

President Lincoln first broached the subject of reconstruction in his annual message of December 8, 1863, which he accompanied with a proclamation on the sub-

THE RAIL-SPLITTER [LINCOLN] AND TAILOR [JOHNSON] REPAIRING THE UNION

From the collection of the New York Historical Society

ject, combined with an offer of amnesty to former rebels taking oath of allegiance to the United States Government.

Of this proclamation he said in his message:

On examination it will appear, as is believed, that nothing is attempted beyond what is amply justified by the Constitution. True, the form of an oath is given, but no man is coerced to take it. The man is only promised a pardon in case he voluntarily takes the oath. The Constitution authorizes the Executive to grant or withhold the pardon at his own absolute discretion; and this includes the power to grant on terms, as is fully established by judicial and other authorities.

It is also proffered that if, in any of the States named, a State government shall be, in the mode prescribed, set up, such government shall be recognized and guaranteed by the United

States, and that under it the State shall, on the constitutional conditions, be protected against invasion and domestic violence. The constitutional obligation of the United States to guarantee to every State in the Union a republican form of government, and to protect the State in the cases stated, is explicit and full. But why tender the benefits of this provision only to a State government set up in this particular way? This section of the Constitution contemplates a case wherein the element within a State favorable to republican government in the Union may be too feeble for an opposite and hostile element external to, or even within, the State; and such are precisely the cases with which we are now dealing.

An attempt to guarantee and protect a revived State government, constructed in whole, or in preponderating part, from the very element against whose hostility and violence it is to be protected, is simply absurd. There must be a test by which to separate the opposing elements, so as to build only from the sound; and that test is a sufficiently liberal one which accepts as sound whoever will make a sworn recantation of his former unsoundness.

But if it be proper to require, as a test of admission to the political body, an oath of allegiance to the Constitution of the United States, and to the Union under it, why also to the laws and proclamations in regard to slavery? Those laws and proclamations were enacted and put forth for the purpose of aiding in the suppression of the rebellion. To give them their fullest effect, there had to be a pledge for their maintenance. In my judgment they have aided, and will further aid, the cause for which they were intended. To now abandon them would be not only to relinquish a lever of power, but would also be a cruel and an astounding breach of faith. I may add, at this point that, while I remain in my present position, I shall not attempt to retract or modify the Emancipation Proclamation; nor shall I return to slavery any person who is free by the terms of that proclamation, or by any of the acts of Congress. For these and other reasons it is thought best that support of these measures shall be included in the oath; and it is believed the Executive may lawfully claim it in return for pardon and restoration of forfeited rights, which he has clear constitutional power to withhold altogether, or grant upon the terms which he shall deem wisest for the public interest.

It should be observed, also, that this part of the oath is subject to the modifying and abrogating power of legislation and supreme judicial decision.

The proposed acquiescence of the national Executive in any reasonable temporary State arrangement for the freed people is made with the view of possibly modifying the confusion and destitution which must at best attend all classes by a total revolution of labor throughout whole States. It is hoped that the already deeply afflicted people in those States may be somewhat more ready to give up the cause of their affliction, if, to this extent, this vital matter be left to themselves; while no power of the national Executive to prevent an abuse is abridged by the proposition.

The suggestion in the proclamation as to maintaining the political framework of the States on what is called reconstruction is made in the hope that it may do good without danger of harm. It will save labor and avoid great confusion.

But why any proclamation now upon this subject? This question is beset with the conflicting views that the step might be delayed too long or be taken too soon. In some States the elements for resumption seem ready for action, but remain inactive apparently for want of a rallying-point—a plan of action. Why shall A adopt the plan of B, rather than B that of A? And, if A and B should agree, how can they know but that the general Government here will reject their plan? By the proclamation a plan is presented which may be accepted by them as a rallying-point, and which they are assured in advance will not be rejected here. This may bring them to act sooner than they otherwise would.

The objection to a premature presentation of a plan by the national Executive consists in the danger of committals on points which could be more safely left to further developments. Care has been taken to so shape the document as to avoid embarrassments from this source. Saying that, on certain terms, certain classes will be pardoned, with rights restored, it is not said that other classes, or other terms, will never be included. Saying that reconstruction will be accepted if presented in a specified way, it is not said it will never be accepted in any other way.

The movements, by State action, for emancipation in several of the States not included in the Emancipation Proclamation, are matters of profound gratulation. And while I do not repeat in detail what I have heretofore so earnestly urged upon this subject, my general views and feelings remain unchanged; and I trust that Congress will omit no fair opportunity of aiding these important steps to a great consummation.

Reconstruction Proclamation

The proclamation in regard to reconstruction contained the following provisions:

1. It offered amnesty to all but specified classes of leading men;
2. It declared that a State government might be reconstructed as soon as one-tenth of the voters of 1860, qualified by State laws, "excluding all others," should take the prescribed oath;
3. It declared that, if such State government were republican in form, it should "receive the benefits" of the guaranty clause;
4. It excepted States where loyal governments had always been maintained; but,
5. It added the caution that the admission of Senators and Representatives was a matter exclusively "resting with the two Houses, and not to any extent with the Executive." The proclamation further remarked that "any provision which may be adopted by such State government in relation to the freed people of such State, which shall recognize and declare their permanent freedom, provide for their education, and which may yet be consistent, as a temporary arrangement, with their present condition as a laboring, landless, homeless class, will not be objected to by the national Executive."

The amnesty offered was accepted by very few persons.

On March 22, 1864, Henry Winter Davis [Md.] succeeded in getting before the House of Representatives a resolution which he had offered early in the session, guaranteeing to States in rebellion "a republican form of government."

Governments for Rebellious States

House of Representatives, March 22–May 4, 1864

Mr. Davis spoke as follows upon his resolution:

The vote of gentlemen upon this measure will be regarded by the country with no ordinary interest. Their vote will be taken to express their opinion on the necessity of ending slavery

with the rebellion, and their willingness to assume the responsibility of adopting the legislative measures without which that result cannot be assured, and may wholly fail of accomplishment. The measure now proposed, or any adequate and proper measure to accomplish its purpose, is entitled to the support of all gentlemen upon this side of the House, not less of those who think that the rebellion has placed the citizens of the rebel States beyond the protection of the Constitution, and that Congress, therefore, has supreme power over them as conquered enemies, than of that other class who think that they have not ceased to be citizens and States of the United States, though incapable of exercising political privileges under the Constitution, but that Congress is charged with a high political power by the Constitution to guarantee republican governments in the States, and that this is the proper time and the proper mode of exercising it. It is also entitled to the favorable consideration of gentlemen upon the other side of the House who honestly and deliberately express their judgment that slavery is dead. To them it puts the question whether it is not advisable to bury it out of sight that its ghost may no longer stalk abroad to frighten us from our propriety.

It purports, sir, not to exercise a revolutionary authority, but to be an execution of the Constitution of the United States, of the fourth section of the fourth article of that Constitution, which not merely confers the power upon Congress, but imposes upon Congress the duty of guaranteeing to every State in this Union a republican form of government. That clause vests in the Congress of the United States a plenary, supreme, unlimited political jurisdiction, paramount over courts, subject only to the judgment of the people of the United States, embracing within its scope every legislative measure necessary and proper to make it effectual and what is necessary and proper the Constitution refers, in the first place, to our judgment, subject to no revision but that of the people. It recognizes no other tribunal. It recognizes the judgment of no court. It refers to no authority except the judgment and will of the majority of Congress and of the people on that judgment, if any appeal from it. It is intended to meet all the emergencies of the national life.

It is the result of every principle of law that there can be no republican government within the limits of the United States that does not recognize, but does repudiate, the Constitution, and which the President and the Congress of the United States do not, on their part, recognize. Those that are here

represented are the only governments existing within the limits of the United States. Those that are not here represented are not governments of the States, republican under the Constitution. And, if they be not, then they are military usurpations, inaugurated as the permanent governments of the States, contrary to the supreme law of the land, arrayed in arms against the Government of the United States; and it is the duty, the first and highest duty, of the Government to suppress and expel them. Congress must either expel or recognize and support them. If it do not guarantee them it is bound to expel them; and they who are not ready to suppress them are bound to recognize them.

The Supreme Court of the United States in declining jurisdiction of political questions such as these, in the famous Rhode Island cases, declared, by the mouth of Chief Justice Taney, in the presidency of John Tyler, that a military government, established as the permanent government of a State, is not a republican government in the meaning of the Constitution, and that it is the duty of Congress to suppress it. That duty Congress is now executing by its armies. He further said in that case that it is the exclusive prerogative of Congress—of Congress, and not of the President—to determine what is and what is not the established government of the State! and to come to that conclusion it must judge of what is and what is not a republican government.

What jurisdiction does the duty of guaranteeing a republican government confer, under present circumstances, upon Congress? What laws may it pass? The rebel States must be governed by Congress till they submit and form a State government under the Constitution; or Congress must recognize State governments which do not recognize either Congress or the Constitution of the United States; or there must be an entire absence of *all* government in the rebel States; and that is anarchy. To recognize a government which does not recognize the Constitution is absurd, for a government is not a constitution; and the recognition of a State government means the acknowledgment of men as governors and legislators and judges actually invested with power to make laws, to judge of crimes, to convict the citizens of other States, to demand the surrender of fugitives from justice, to arm and command the militia, to require the United States to repress all opposition to its authority, and to protect it from invasion—against our own armies; whose Senators and Representatives are *entitled* to seats in Congress, and whose electoral votes must be counted in the election of the President of a Government which they disown and defy! To accept the

alternative of anarchy as the constitutional condition of a State is to assert the failure of the Constitution and the end of republican government. Until, therefore, Congress recognize a State government, organized under its auspices, there is no government in the rebel States except the authority of Congress. In the absence of all State government, the duty is imposed on Congress to provide by law to keep the peace, to administer justice, to watch over the transmission of decedents' estates, to sanction marriages; in a word, to administer civil government until the people shall, under its guidance, submit to the Constitution of the United States, and, under the laws which it shall impose, and on the conditions Congress may require, reorganize a republican government for themselves, and Congress shall recognize that government.

But we have not yet suppressed the insurrection. We are still engaged in removing armed rebellion. Is it yet time to reorganize the State governments, or is there not an intermediate period in which sound legislative wisdom requires that the authority of Congress shall take possession of and temporarily control the States now in rebellion until peace shall be restored and republican government can be established deliberately, undisturbed by the sound or fear of arms, and under the guidance of law?

What is the condition of the rebellion at this time? There is no portion of the rebel States where peace has been so far restored that our military power can be withdrawn for a moment without instant insurrection. There is no rebel State held now by the United States enough of whose population adheres to the Union to be intrusted with the government of the State. One-tenth cannot control nine-tenths. Only in West Virginia, and possibly Tennessee, does our authority exist. You can get a handful of men in the other seceded States who would be glad to take the offices if protected by the troops of the United States, but you have nowhere a body of independent, loyal partisans of the United States, ready to meet the rebels in arms, ready to die for the Republic, who claim the Constitution as their birthright, count all other privileges light in comparison, and are resolved at every hazard to maintain it.

The loyal masses of the South, of which we hear so much, what was their temper at the outbreak of the rebellion? what is their temper now? It is the most astounding spectacle in history that in the Southern States, with more than half of the population opposed to it, a great revolution was effected against their wishes and against their votes, without a battle, a riot, or a

protest in behalf of the beneficent Government of their fathers —a revolution whose opponents hastened to lead it, without a martyr to the cause they deserted except the nameless heroes of the mountains of Tennessee, or a confessor of the faith they had avowed save the illustrious Petigru of South Carolina!

Doubtful of the issues of the war, exhausted by bloodshed, anxious for peace—peace and *independence*—there are some who will accept peace and union, but they are not men who will draw the sword for the United States, and they would be equally content with peace and independence.

What, then, are we to do with the population in these States? To make "confusion worse confounded" by erecting by the side of the hostile State government a new State government on the shifting sands of that whirlpool, to be supported by us while we are there and to turn its power against us when we are driven out? That would be to erect a new throne where

> "Chaos umpire sits,
> And by decision more embroils the fray
> By which he reigns."

In my judgment it is not safe to confide the vast authority of State governments to the doubtful loyalty of the rebel States until armed rebellion shall have been trampled into the dust, until every armed rebel shall have vanished from the State, until there shall be in the South no hope of independence and no fear of subjection, until the United States is bearded by no military power and the laws can be executed by courts and sheriffs without the ever-present menace of military authority. Until we have reached that point this bill proposes that the President shall appoint a civil governor to administer the government under the laws of the United States and the laws in force in the States respectively at the outbreak of the rebellion, subject, of course, to the necessities of military occupation.

When military opposition shall have been suppressed, not merely pushed back, then call upon the people to reorganize in their own way, subject to the conditions that we think essential to our permanent peace and to prevent the revival hereafter of the rebellion, a republican government in the form that the people of the United States can agree to.

Now, for that purpose there are three modes indicated. One is to remove the cause of the war by an alteration of the Constitution of the United States prohibiting slavery everywhere within its limits. That, sir, goes to the root of the matter, and

should consecrate the nation's triumph. But there are thirty-four States—three-fourths of them would be twenty-six. I believe there are twenty-five States represented in this Congress; so that we on that basis cannot change the Constitution. It is therefore a condition precedent in that view of the case that more States shall have governments organized within them.

The next plan is that inaugurated by the President of the United States in the proclamation of the 8th December, called the amnesty proclamation. That proposes no guardianship of the United States over the reorganization of the governments, no law to prescribe who shall vote, no civil functionaries to see that the law is faithfully executed, no supervising authority to control and judge of the election. But if, in any manner, by the toleration of martial law lately proclaimed the fundamental law, under the dictation of any military authority, or under the prescriptions of a provost marshal, something in the form of a government shall be presented, represented to rest on the votes of one-tenth of the population, the President will recognize that, provided it does not *contravene* the proclamation of freedom and the laws of Congress; and, to secure that, an oath is exacted.

Now you will observe that there is no guaranty of law to watch over the organization of that government. It may combine all the population of a State; it may combine one-tenth only; or ten governments may come competing for recognition at the door of the executive mansion. The executive authority is pledged; Congress is not pledged. It may be recognized by the military power and may not be recognized by the civil power, so that it would have a doubtful existence, half civil and half military, neither a temporary government by law of Congress, nor a State government, something as unknown to the Constitution as the rebel government that refuses to recognize it.

But what is the proclamation which the new governments must not contravene? That certain negroes shall be free, and that certain other negroes shall remain slaves. The proclamation therefore recognizes the existence of slavery. It does just exactly what all the constitutions of the rebel States prior to the rebellion did. It recognizes the existence of slavery, and they recognize the existence of slavery; and, therefore, the old constitutions might be restored to-morrow without *contravening* the proclamation of freedom. Those constitutions do not say that the President shall not have the right, in the exercise of his military authority, to emancipate slaves within the States. They say nothing of the kind. They do not even establish slavery.

There is not a constitution in all the rebel States that formally declares slavery to be the supreme law of the land. They merely recognize it just as the proclamation recognizes its existence in parts of Virginia and in parts of Louisiana. So that the one-tenth of the population at whose hands the President proposes to accept and guarantee a State government can elect officers under the old constitution of their State in exactly the same terms and with exactly the same powers existing at the time of the rebellion, and may under his proclamation demand a recognition. No man will say that there is one word in their laws that contravenes what purports to be a paramount, not a subordinate, order. So soon as the State government is recognized the operation of the proclamation becomes merely a judicial question. The right of a negro to his freedom is a legal right divesting a right of property, and is to be enforced in the courts; and then the question is what the courts will say about the proclamation. Is it valid or invalid? Does it of itself confer a legal right to freedom on negroes who were slaves? Is it within the authority of the Executive? These are the only questions open under such a government; and how local State courts created by the Southern people will decide such a question *no one* can doubt; for it is quite certain that the great mass of that population is devoted to the system of slave labor; and, though if the question be whether they will give up slavery as the condition precedent to the restoration of a State government, they will abandon it; yet if it be whether they prefer to maintain or abolish slavery, there is not the least doubt that their voice would be almost unanimous for its maintenance. If they have the decision we know what it will be already. It is therefore under the scheme of the President merely a judicial question, to be adjudged by judicial rules, and to be determined by the courts. It is a question whether each individual negro be free. It is a question whether the master has the right of seizure, or the negro can control himself. It is to be determined by the writ of *habeas corpus*. It is a question of personal right, not a question of political jurisdiction. Its fate in the State courts is certain. Its fate in the courts of the United States under existing laws is scarcely doubtful.

Fernando C. Beaman [Mich.] supported the resolution. He denied the doctrine of secession and insisted that, though a State might commit treason, it was still the imperative duty of the national authority to provide

a government for the people and restore domestic tranquillity.

In the beginning of the war, he said, the Government was very cautious that it should do nothing which might admit, even inferentially, that the rebel States had in law seceded. We did not clearly distinguish between abandonment or abrogation and legal secession. We did not immediately discover that the destruction of local government had prepared the way for the substitution of Federal authority. Hence State laws, especially in regard to slaves, were respected by the generals in the field.

Even in this hall, for a long time during the last Congress, we exhibited the farce of calling on South Carolina and her sister conspirators for bills and resolutions. In July, 1862, the President—with his habitual caution and prudence, and in consonance, it is believed, with a very extensive public sentiment, in a solemn document in relation to the confiscation act laid before both Houses of Congress—declared that it was "startling to say that Congress can free a slave within a State"; and yet, on the 1st day of January following, he issued a proclamation that will render his name as famous and imperishable as that of Washington, in which he declared freedom to nearly all the slaves in the seceded districts.

But now we have advanced from this position. We have, after much delay, determined to confiscate the property of rebels. We no longer drive back the fugitive from oppression to miserable bondage. We no longer force him against his will to prosecute acts of treason and rebellion, but we invite him to partake of the blessings of freedom; we give him a musket, and rank him among the defenders of the country. We have determined to prosecute the war in accordance with the laws of nations, disregarding the pretended constitutional claims of rebels in arms.

Still, sir, there is some difference of opinion in the country in regard to the proper mode of treating those States and in respect to the power of Congress over them. I regard the difference of opinion on this side of the House as one rather of terms than of ideas, of theory rather than of practice. Whether, as it seems to me, the State is out of existence, or as is alleged by the gentleman from Maryland [Mr. Davis] the State survives, but the Government is abrogated and the Constitution is "absolutely dead" (which I think is substantially the same proposition),

"and incapable of revival except by a revolutionary process"; or, as is affirmed by the gentleman from Pennsylvania [Thaddeus Stevens], the seceded States are foreign powers, is not perhaps material to the present discussion. The important inquiry is not what technical words will most aptly define the anomalous condition of the seceded districts, but the pertinent, practical questions are, What can we do with them? How far can the National Government exercise jurisdiction within its own territorial limits? To what extent may it intervene to protect its own loyal citizens in the midst of rebels? What are its powers as an agent in the reëstablishment of lawful State governments, and to what extent may it provide for security in the future?

Each of the theories to which I have referred asserts all the power necessary to warrant the passage of the bill in question, as well as all the authority that I have ever deemed requisite for a safe construction of the Government. If the State be abrogated we may permit a new creation with such restrictions as we may be pleased to direct. If the State survives, but her constitution and government have been destroyed, we may allow a reorganization under such conditions and with such limitations as we see proper to impose. If the State has become a foreign power, then, as a conquered province, we may treat her as a part of the national domain; and in either case we may provide for her people suitable government and for such length of time as she shall be unable to resume her place in the Union. Indeed, we are solemnly bound by the organic law to "guarantee to every State in this Union a republican form of government." But how? What is the construction of this provision, and what is the extent of the obligation? It is clear that it does not bind the Union in any case to maintain a State government. Such an obligation would be as absurd as it would be impossible of performance.

This clause in the Constitution, by misconstruction, as it seems to me, has led the minds of gentlemen into the strangest and wildest mystification. They argue that as a necessary consequence of its existence, both in law and in fact, a State once organized and admitted into the Union will ever remain a legitimate, organized State; and, therefore, assuming this as a postulate, it is alleged that in theory a State cannot secede. Whether there may be secession in fact is a question of physical power. Should the rebels prevail and establish their independence, such a result would not vindicate the doctrine of secession, but it would be the establishment of secession in fact. Would it not, in that event, be ridiculous to affirm that because, by the Con-

stitution, there is to every State guaranteed a republican form of government, therefore those established independent States were still States of the Union?

For the same reason, it is said that no State can commit suicide; but no sane man believes that a policy of life assurance will secure immortality to the assured.

Now it seems to me that the principles applicable to the questions of secession, State suicide, and abrogation of State constitutions and State governments are simple and easily illustrated. No State can, without consent, legally withdraw from the Union; therefore there can be no legal secession. No State can release her territory and people from the claims and injunctions of the Federal Constitution until she shall have established her independence by force of arms; so in that sense no State is out of the Union. When a State, by the consent and active participation of her officers and people, has repudiated and foresworn the Federal authority and joined an antagonistic confederacy, she is no longer a State in the Union; but her territory and people, until she shall have established her enfranchisement, will remain within the jurisdiction of the United States and amenable to Federal authority. If she succeeds, whatever may be the guaranties of the organic law, her whole territory is out of the Union. By the action of the people and the State authorities in making war upon the United States and forming a foreign alliance, the State, or the government, if you like the term better, is out of existence. Certainly you do not recognize the rebel authorities, and there is no other in those States; so it follows that there is no government in the seceded district that can be recognized under the Federal Constitution. As here used, I regard the terms State and government as synonymous, because I cannot conceive of a State, in the sense used, as applicable to our political system, without some kind of governmental organization.

Now, I repeat that the Constitution does not guarantee that every State shall maintain a State government. The Federal Government has pledged its faith that no State of the Union shall be forced or even permitted to have a monarchical government, and that it will render all needful aid to enable the people to sustain one republican in form; but if they will not have it you cannot exercise the functions of State government for them. Such is the present condition of the rebellious districts. They had State governments under the Constitution and within the Union, but they tore them into pieces and cast away the fragments. But amid the traitors, surrounded by the ruins of those

fallen governments, are true patriots and loyal men. They are citizens of our common country, and entitled to all the benefits guaranteed by the Federal Constitution. They had not votes and arms sufficient to resist the traitors. You have strength to crush out rebellion, but you cannot vote nor elect officers for them. But you can give them temporary government, republican in form, such as is now enjoyed by hundreds of thousands of American citizens without the limits of State organizations; and adopt prompt and efficient measures for an early restoration to their former rights and privileges. Such, I understand, is the purpose of the bill.

The resolution was referred to a special committee, a majority of whom reported, on April 19, a bill with the following provisions:

1. Appointment of provisional governors for the seceded States by the President with the consent of the Senate.

2. When insurrection in any of the States has been suppressed the provisional governor shall enroll its white male citizens, and, when the number of those who take the oath of allegiance to the Federal Government amounts to one-tenth of the whole, he shall call a convention of these to establish a State government.

3. The number of delegates to this convention shall be that of the last constitutional State legislature, appointed by the provisional governor among the counties. The provisional governor shall fix and control the election to the convention and preside over its deliberations.

4. No person who has held office (civil or military) under the rebel usurpation, or has borne arms against the Federal Government, shall vote for a delegate or be elected as one, even though he takes the oath of allegiance.

5. The State government adopted by the convention shall provide: (a) that no one who has held office under the rebel usurpation shall vote for State officers or serve as such; (b) slavery shall be forever prohibited; (c) no debt, State or Confederate, which has been contracted under the usurping power shall be recognized or paid.

6. The new constitution shall be submitted to the vote of the loyal people of the State, and, if it is ratified by them, the State shall be proclaimed by the President, with the assent of Congress, as a State on equal terms with those which had not seceded from the Union.

7. If the convention shall refuse to adopt a constitution on the conditions provided, the provisional governor shall dissolve it, and, when he has reason to believe that another convention will adopt such a constitution, shall call this for the purpose of doing so.

8. Until a permanent State organization has been affected the provisional governor shall execute the Federal laws, and the laws of the State the year before secession, and shall not recognize slavery. To assist him in this the President shall appoint such State officers as are necessary.

9. The taxes collected under the laws of the States shall be applied to the State administration, and any surplus shall be reserved in the Federal treasury to be turned over to the permanent State government when this is organized.

10. All slaves shall be freed, and persons attempting to restrain them of their liberty shall be fined and imprisoned.

11. Every person who shall hereafter hold any office, civil or military, in the rebel service is declared not to be a citizen of the United States.

James C. Allen [Ill.] a member of the committee, spoke against the bill. He said that the method proposed was an innovation in our political system and that the powers conferred were unconstitutional, being in derogation of the rights of the States and of the people.

If the States were out of the Union, he asked, when did they get out, and how did they become foreign States?

By resisting the authority of the United States with force? Surely not. They could not thus cut asunder the ligaments that bound them to the Federal Government and release themselves from the obligations and duties which they owed to it, unless this resistance had been carried to a point where the Government had given its consent to a separation, the point at which all revolutions become successful. It will not be contended by the friends of this bill that that point has been reached. Then if they have not thus hewn their way out of the Union to the position of foreign States, how else could they get out? There is but one other way, and that is by their ordinances of secession. If they could go out by act of secession without consent of the Federal Government, then they are foreign States, and their citizens owe obedience and allegiance to another government,

and the war we have been waging against them is not a war to vindicate the supremacy of the Constitution and the laws of the Federal Government, but a war of conquest for the subjugation of a foreign people. If they became foreign States by the act of secession, then they had a right to secede. If they had no right under the Constitution and laws to secede, then their ordinances of secession were void, and they are yet States in the Union, and the allegiance and obedience of their citizens are due to the Federal Government, in all that the Federal Government has a right to demand.

But these States were not regarded by the Government as out of the Union. The President and Congress did not so regard them. The people, when they rallied under the call for troops, rallied under a belief that the war was a war to maintain the Union, to vindicate the supremacy of the laws over men and States in rebellion against rightful authority. It is true we treat their citizens, when captured with arms in their hands, as prisoners of war, entitled to the rights that pertain to belligerents under the usages of war; but we do this, not because we regard them as citizens or soldiers of a foreign government, but because humanity and the interest of our own soldiers captured by them require that we should thus treat them.

This bill is based upon the supposition that the time will come when these people will be willing to return to allegiance and duty. But it contains provisions which destroy the equality of these States and curtail the rights of their citizens. I know gentlemen are ready to answer that these people have forfeited the protection which the Constitution gives to the law-abiding citizen and have no right to claim the protection of the Constitution. I answer, they have rendered themselves amenable to the penalties prescribed by the Constitution and laws by their rebellion, and it will remain with the Government to say how far these penalties may be inflicted upon them when again brought within their reach; but you can only inflict penalties on individuals. You cannot, and ought not if you could, to fix the badge of inequality upon the States, for I assume if these States are not entitled to equality of right in the sisterhood of States then they ought not to be in the sisterhood. This is the theory of our Constitution, and has ever been the practice of the Government. No plan for the reorganization of these States will be successful that does not keep this fact in view. Their reorganization on any other basis will be effected only by force, and their people will yield only such obedience to the Government as is exacted by force.

The President's plan, as set forth in his amnesty proclamation of December last, is subject to the same objection. The House will pardon me if for a moment I wander from my argument upon this bill to pay a passing notice to that proclamation, although it may be deemed a work of supererogation to discuss a document of such unlimited pretension that has so soon fallen into such general contempt. In regard to it, I agree with much that was said by the gentleman from Maryland [Mr. Davis], that it is not worth the paper upon which it is written; that the President possessed no constitutional power to enforce it; that it is a dead letter except in the presence of the army. That it was intended to increase the President's power on the floor of the House and of the Senate, and more particularly in the electoral college, are facts too palpable to be successfully controverted. I need not say that the powers assumed in the proclamation are not only dangerous to civil liberty, but that their exercise is military usurpation. If he can in time of war suspend one portion of the Constitution under the pretext of military necessity, he can suspend the whole instrument, and make his power not only absolute, but perpetual; he can suspend that provision of the Constitution which authorizes the people to elect his successor in November next, and install him into office on the 4th of March following; he can issue his mandate and disperse the two Houses of Congress; he can send his posse into your court-rooms and drive the judges from the bench. All these things he can do if he has power to dictate to a State what its State constitution shall or shall not contain. What power the President possesses, either in peace or in war, he derives from the Constitution. Whatever powers he exercises must be exercised in pursuance of its warrant, and when he steps beyond the power conferred by that instrument he becomes to that extent a usurper.

This bill in some respects is an improvement upon the President's plan of reconstruction. It preserves the geographical boundaries of the States, and would prevent the division of one of these States into two or more States. It also in a subsequent section provides that Congress shall determine when they have sufficiently reformed their State governments as to entitle them to a representation upon this floor and in the Senate. It vindicates, to this extent, the dignity and power of Congress over these questions, but at the same time it is obnoxious to serious objections, some of which are embraced in the President's plan. One of the most prominent is that it carries out a feature in the President's plan which enables one-tenth of the citizens to make

constitutions and laws for the government of the other nine-tenths.

The President would have created a sort of order of nobility, the patent whereof he proposed to bestow, not for eminent service to the State or upon the field, or for valuable discoveries, which is usual in governments where these orders are created, but on account of their sycophancy, in taking an oath to support and maintain the President's proclamations as coming within his prerogative and power. This bill proposes to confer the same dignity upon one-tenth, but for a different reason; but it is no less objectionable in principle.

This bill is based upon the idea that these are yet States in the Union with the State governments usurped or overthrown. What, then, is necessary to be done to restore rightful rule within their limits? They have the same constitutions and the same laws they had before the rebellion; they have not been abrogated nor changed; no attempt has been made to change them in any very important particular except in the change of the form of oath which officers of State should take when they are required to take an oath to support the constitution of the Confederacy instead of the oath to support the Constitution of the United States. Their constitutions in this respect are not really changed. Having no power to secede, not being out of the Union, the change in this regard is void and has no effect; so with whatever legislation has been had in contravention of the Constitution of the United States, it being the supreme law of the land operating there as elsewhere. What, then, is needed? Not constitution and laws; they have them already. But their offices, executive, ministerial, judicial, and legislative, have been usurped and their functions performed by men who refused to acknowledge their obligations to the Federal Government, and who have been sustained in this refusal by military force. What is needed, then are new incumbents in these offices, men who will acknowledge the authority of the Federal Government and pay respect and obedience to its laws. They require a reform in the administration of their State governments already existing. When this reform is wrought all conflict between the Federal Government and the State governments will cease.

These States do not, nor will they, occupy toward the general Government the relation of Territories. Hence no authority can be found to authorize this legislation in those provisions of the Constitution relating to Territories. Nor will they occupy the relation to the Government that conquered provinces occupy to the government making the conquest. Usually the laws of

the conquered are so different, so antagonistic to the laws of the conqueror as to require radical change to adapt them to their new relation. But such is not the case in these States. Their constitutions and their laws are such as have always been recognized by the Federal Government as republican in form and consonant with the principles of our Constitution. Hence the power to enforce upon these people the provisions of this bill must be found in some other provision of that instrument. The gentleman from Maryland [Mr. Davis] contends that he discovers the power in section four, article four, of the Constitution, which reads as follows:

"The United States shall guarantee to every State in the Union a republican form of government."

That provision cannot apply to States already having constitutions and laws republican in form.

Now, one who guarantees the performance of a contract is not the one who undertakes to perform its stipulations. So, when Congress is required to guarantee republican forms of government to the States, it requires only that Congress shall see that the States enjoy such a form of government, and protect them in its enjoyment.

Mr. Allen further objected to the bill as anti-republican, because it imposed State governments upon the people of the States without leaving them a really free choice in the matter.

The bill not only undertakes to direct what shall be in their constitutions on certain subjects, but it determines also who shall and who shall not enjoy the elective franchise and be eligible to office. This power not having been conferred by the Constitution upon Congress, belongs exclusively to the State. If any one controverts this position I would refer him to the first article, second section, of the Constitution, where, in providing for the election of Representatives to Congress, we read that "the electors in the several States shall have the qualifications requisite for electors to the most numerous branch of the State legislature," leaving the conclusion irresistible that it is to the State belongs the power of determining this question.

The bill is obnoxious to the further objection that it gives to the President of the United States the power, through his military governors and his provost marshals, to mold the Constitution and laws to suit himself on questions where Congress does not intervene, and between what power Congress exercises, and what the President, through his military, would exercise, the

people would have none left. These questions should be left to the people as they are left in other States, without the intervention of Congress or the Executive.

I confess, sir, that in my view it is a very grave offence to resist, by force of arms, the authority of the Government. But is it such an offence as requires Congress, in violation of constitutional right, to step in and take away from the offender the elective franchise? If so, I fear that some, who, in the modern acceptation of the term, are extremely loyal, would suffer from such a law. Some in Massachusetts, in Ohio, and in my own State have been guilty, in times past, of resisting the authorities of the United States in enforcing the Fugitive Slave law.

If the people are not capable of making constitutions and laws for themselves, then our form of free Government is a failure, and let us say so, and take the necessary steps to change it. But do not, under the forms of a republic and under the constitution of a republic, play the dictator. Let us not, under the pretext of giving to the States a republican Government, force upon them one in which the main features of a republic are swallowed up in congressional dictation.

Again, this bill requires that the constitution which the State shall adopt shall contain a provision "that no debt, State or confederate, created by or under the sanction of the usurping power shall be recognized or paid by the State." That is also a question that ought to be left to the State to determine. There were many men in those States when the rebellion first broke out who had their property taken by the usurping State authorities under a promise to pay for it, men who were then, and are yet, true to the Union, but who were left without any protection from the Federal Government, who were left to the mercy of the usurping power; and for Congress to compel the State to repudiate such an obligation and leave one whom the Government did not, and could not, protect to beggary and want would, in my judgment, be to commit an injustice for which there can be no excuse. Let the State, in the exercise of a wise discretion, determine what ought to be paid and what ought to be rejected. The burden of such payments will fall upon the people of the States if they see fit to assume them. Let us not in a mere wanton exercise of power do that which will appear unjust in the eyes of the world. We can trust them on that question if we can trust them with the management of a State government.

But there is another provision by which Congress assumes to exercise a power which does not belong to it. I allude to the provision which requires these State to incorporate into their

constitutions a clause prohibiting involuntary servitude. There are three provisions in this section that Congress declares shall be in their State constitutions; provisions over which the people of the State to be affected by them are to have no control; questions reserved to the States by the Constitution; questions which Congress cannot determine for them without exceeding its authority, and without violating the principles of republican government.

The bill contains other provisions not within the power of Congress. One abolishes slavery in these States as far as an act of Congress can abolish it. It not only abolishes it, but it takes away from the courts, as far as an act of Congress can take away, the power of passing upon the right of Congress to abolish it. It declares that, if any one declared free by this act shall be held under pretence of claim to service or labor, the courts, upon *habeas corpus,* shall discharge such a one.

Another provision attempts to give legal effect to the President's proclamation by prescribing the punishment of those who shall attempt to restrain the liberty of any one declared free by that proclamation.

In these two sections, as well as in section seven, the advocates of this bill "overleap" all constitutional barriers and press on to the accomplishment of their purposes, in contempt of the rights of the States and of the people, sowing broadcast, as they go, the seeds of distrust and revolution, fulfilling the prediction that when they obtained the power they would trample under foot and dishonor the Constitution. If this House have determined to pass this bill, I have no reason to suppose that anything I can say will be heard; since to its advocates the freedom of what slaves are left is of more moment than the Constitution, which secures the civil liberty of our own race.

But gentlemen say we must bury slavery out of our sight. If the people desire it buried let it be done, but let its funeral be conducted according to the covenants of the Constitution. Let us not break the faith pledged by the fathers. Let us not forget that by a faithful and strict compliance with our obligations in giving to each State and each individual that which belongs to them, under the Constitution, we vindicate the law and increase our own security, and that by violating its provisions we ourselves become revolutionists.

Let us not, in our effort to destroy slavery if it be alive or to bury it if it be dead, destroy the fundamental law of our Government, and leave our own race a prey to anarchy or despotism. Some one suggested that when slavery was buried upon its tomb-

stone should be written, "Slavery—died of the rebellion." I warn gentlemen to beware, lest beside the grave of slavery be found another grave and another tombstone, whereon history will write, "Civil liberty—died of revolution."

Nathaniel B. Smithers [Del.], a member of the committee, supported the bill.

In a nation allegiance and protection are correlative. Therefore the loyal people of a seceded State are the repositories of its power and unorganized sovereignty. Providing the preliminary arrangements for reorganization must of necessity begin *de novo* with the rude elements of an unformed political society, the first step in the formation of a government based upon the will of the people is to determine of what persons that people shall be deemed to consist. By the terms of the bill all white male citizens are to be enrolled; but inasmuch as rebels are citizens of the United States, though arrayed against its authority, a test must necessarily be applied to ascertain who, being loyal, are entitled to participate in framing the organic law. The bill does not regard any right as pertaining to those adhering to the rebellion. They are excluded from all share in the Government formed under its auspices. The test proposed is an oath to support the Constitution of the United States. The persons thus taking the oath must constitute a majority of those who are enrolled. These persons so enrolled and testifying to their loyalty are deemed to constitute the people. By their assent the machinery of government is to be set in motion. On their consent the Constitution to be ordained is to rest, not only in the origin of the convention, but in its ratification by their express will.

How, then, can it be pretended that the Government is not based upon the consent of the governed? Is it because persons are excluded who refuse to qualify themselves by taking the oath of allegiance? Surely it can be no deprivation of any political right to declare that he who renounces obedience to the Government shall not have the privilege to determine concerning the form of State government to be established.

I deny that a rebel has any political rights. I deny that in any legitimate sense he is or ought to be held as one of the people authorized to form or administer government. That he is not recognized by this bill as entitled to citizenship is the result of his own refusal to acknowledge allegiance to the United States.

But it may also be alleged, Mr. Speaker, that the bill is objectionable because it provides that a number less than a majority of those who were formerly citizens of the State may ordain the constitution.

If this comprises all the loyal people it is difficult to discover on what principle it can be denounced as anti-republican. If they are satisfied with the law of restoration, in accordance with the act of Congress, who has the right to complain? By their own volition they accept the terms of reorganization, and it ill behooves those not subject to the laws which they enact for their own government to deny them the privilege of entering into the administration of their own domestic affairs.

The proportion to be established by the bill is a matter for consideration; not with the view of avoiding the charge of a violation of the principle of republican government, but of ascertaining whether there is a body capable of self-rule and of maintaining civil administration in the State.

But, Mr. Speaker, we are also met with the objection that this bill, by the provision of emancipation, interferes with the rights of the several States within its purview to regulate their domestic institutions. This is no novel suggestion. It is as old as the struggle for the adoption of the Constitution. It constituted a material portion of the argument of those who arrayed themselves against the formation of the National Government. From that time until now it has been constantly thrust forward in every discussion involving the right of Congress to adopt measures requisite for the national advantage. Do we propose to exercise the power of regulating the currency? We are met by the dogma of State rights, enlisted in the interest of local banks. Do we endeavor to exert our authority to regulate commerce? We are confronted with the same phantom of State rights, pressed into the service of some municipal corporation. Do we determine to save the Government, reeling beneath the blows of a formidable rebellion organized and operated by the instrumentality of African slavery? We dare not accomplish its suppression and prevent the contingency of future insurrections for fear we shall invade the hallowed precincts of State rights.

Mr. Speaker, it is time that there was an end to this delusion. The danger to this people is not from centralization, but disintegration. If indeed there were such antagonism between the two systems of government [national and State] that one or the other must perish, it would be for the people to judge which should be sacrificed: whether that which renders us great and

powerful and prosperous should give way to the maintenance of petty municipalities that could secure neither respect abroad nor concord at home. Should the dread alternative be presented, I mistake the temper of the people, and their estimation of the solid and substantial benefits of the Union, if they would not choose a consolidated and centralized Government rather than underlie the calamities incident to individual States or miserable confederacies, the inevitable prey of intestine strife and foreign domination.

On April 29 Thomas Williams [Pa.] spoke in favor of Congress reconstructing the governments of the seceded States as if they were Territories, and against military reconstruction by executive power.

These States are either *in* the Union, or they are *not*. Some people may think it makes no practical difference how we conclude on this point while the war is flagrant. That is not my judgment. It has seemed to me that all the irresolution, all the unsteadiness in our counsels, all the doubt and hesitation and delay, all the apparent obtuseness and obliquity of the moral sense, and many of the differences between good and loyal men here, were mainly referable to the fact of the failure to settle this great question, and settle it correctly, in advance. The war was inaugurated on the theory that they were *in*, when the great fact of war, which individuals cannot wage in the social state, and peoples do not wage upon themselves, was a proclamation that they were *out*. The Democrats of the North were willing to accept the fact that they were out, *without war*—to adopt the principle of the *laissez-nous faire*—the "let us alone" of the rebel authorities, and to treat with them upon the idea of a *reconstruction*, upon that kind of compromise which involves generally a traffic in principles, and that sort of mutuality where all is demand on the one side and concession on the other. They were willing to waive the right and the treason absolutely, and declined the alternative of war on the ground that the obligation was an imperfect one, whose performance depended upon the mere will of the contracting parties, and could not be enforced. With them it was peaceful secession, with *reconstruction by treaty*. The ruling thought was, of course, to spare, to save, to do as little harm as possible to those who were not our enemies, but our brethren—*sisters*, perhaps, I should say, albeit a little "wayward," whose anger was to be kissed away. The rebels were Democrats, whom it would be a sin to kill, and a greater

sin to rob of their sacred property in slaves. Better a hundred thousand free white Northern youth should die than one negro slave should be lost to his proprietor, or employed in arms against him. To carry out this policy we wanted conservative generals who would be sure to hurt nobody, and saw men made *heroes*—by newspaper process, as *great* men are now made since that manufacture seems to have passed out of the hands of Providence—not because they fought, and fought successfully, but because they would not fight at all.

But the light which was struck out from the collision of hostile bayonets, struggling up through the haze in which we were enveloped, began to dawn slowly upon the country. It was soon reflected back upon these Chambers, and statesmen began to feel that they were in the presence of a great fact that could not be conjured down by empiricism, or reasoned down except by the logic of artillery.

And now let us inquire for a moment how the public law of Christendom, as declared in the opinions of the publicists, and the practice of enlightened nations, squares with the present proposal.

It will be found, I think, that the most eminent of these writers are agreed in the opinion that the parties to a civil war, having no common judge, or common superior on earth, "must necessarily be considered as constituting, at least for a time, two separate bodies, two distinct societies," and that "when a nation becomes divided into two parties absolutely independent, and no longer acknowledging a common superior, *the State is dissolved,* and the war between the two parties stands on the same ground, *in every respect,* as a public war between two different nations." This is the language of Vattel (pp. 425, 427), and the learned Barbeyrac, in his notes on the treatise of Grotius, (Book 3, cap. 6, sec. 27), affirms the same doctrine.

It is in direct antagonism therefore to the *law* which governs now, as to the *facts,* to say that these States are still in the Union as they were before. The theory that this Union was indissoluble refers only to *the right,* to its organic law, and to the purposes of the men who welded these States together; but never was intended to imply that it could not be ruptured by violence, as it has unquestionably been, leaving to the wronged and adhering States their remedy for the breach, not by enforcing a specific performance, which is impossible, but by the recovery of the territory which is ours by the contract, and the expulsion of the delinquents, with the forfeiture of all their rights in and under the Union, from which they have withdrawn.

To say with a gentleman from Kentucky [William H. Wadsworth] that this is an admission of the *right* to secede is to confound the *fact,* which is one thing, with the *right,* which is another. To assert with the gentleman from Missouri [Francis P. Blair, Jr.] that this is a concession of their independence, which would authorize their recognition by foreign powers, is to forget that we have rights which no violation of the contract by the other party can destroy. It would be just as sensible to insist that a judgment of outlawry was a release of the traitor from his allegiance, and authorized the government to which he fled to espouse his quarrel and adopt him as its citizen.

Upon this question of the forfeiture of political rights some further light may be borrowed from the practice of nations in the application of the *jus postliminii,* which refers, according to Grotius and Bynkershoek, as well to cases of territorial recapture where a whole community is involved as to those where the goods of a subject once seized as prize of war are afterward retaken from the hands of the captors. Here it will be found that even the provinces of a confederation which have been wrested from it by an enemy have not always been reinstated in their original privilege, as reason would seem to adjudge that they ought to be.

The speaker here instanced refusals of the States General of Holland to readmit into the Union provinces which had been wrested therefrom by the Spaniards and reorganized by the Dutch.

These, however, were cases of seizure and occupation by an enemy; ours, of a voluntary abdication of Federal rights and an organized resistance by governmental action to the Federal law. There is no case here, therefore, for the application of the law of postliminy. Some of these States, on the contrary, constructed out of Territories purchased by this Government, were lifted from the posture of subject and dependent provinces upon the platform of the Union, on the condition of obedience to its laws, and by their voluntary abdication of the privileges so conferred have, as it seems to me, by an inevitable logic, lapsed back again into the territorial condition. Where they have been recaptured the local governors have fled, the local organizations have been dissolved, and their territories are now under military occupation by the armies of the Union, or under provisional governors appointed by the Executive. This fact alone, as it seems to me, involves the admission that they are no longer in

the Union. If they are, that occupation is unlawful. If their governments are dissolved, however, they must, of course, be reconstructed under the auspices of the conquering power, and that not by the Executive, but by the legislature of the Union, whose sword he bears, and which only, consistently with the genius of our institutions, the past practice of the Government, and the letter as well as spirit of the Constitution, can venture to determine what use shall be made of the territories conquered by it, and when and upon what terms they shall be readmitted into full communion as members of this Government. It is not certainly the military power that is to reorganize, and modify, and breathe new life into their defunct constitutions. Until the end of subjugation is achieved and the resistance entirely overcome, so as to give place safely to the reëstablishment of the civil authority, a military occupation is indispensable, of course. When that period arrives the sword must be sheathed, and the Territory return to the direction of the law-making power, which will prescribe the rule for its government, and allow to its people the privilege of reorganizing under republican forms. I call it Territory and invoke the law that governs there, because I know of no intermediate condition. To permit any executive officer to declare its law, and set it in motion, and place it under the control of a minority—a mere tithe of its citizens—with power to send delegates to Congress with representation unimpaired and unaffected—even though he should reënact a part of its abrogated constitution—would be, as I think, a monstrous anomaly, a violation of fundamental principles, and a precedent fraught with great danger to republican liberty. Here is the dilemma. To come back into the Union a State must either be born anew or come back with all its right unimpaired, except those material ones which have been destroyed in the progress of the war. There is, I think, no middle ground, as there is no power either here or elsewhere to prescribe terms which shall abridge the rights or privileges of a State that has *not* been out of the Union, or returns to it in virtue of its original title.

When I suggest, however, that these States are *out*, it is with this important qualification, that they are out in point of *fact*, with a forfeiture of all their franchises as members thereof, whenever the issue of battle shall have been decided against them; but subjects of it still—members, if you choose—in legal contemplation, so far as regards their obligations and duties under the Constitution, and our right to visit them with punishmen for the delinquency, proportioned to the magnitude of their

offence. They are in for correction, but not for *heirship;* just like the unnatural child who has attempted the crime of parricide, and only succeeded in dyeing his murderous hands in the blood of his loyal brethren. It is bad logic to infer that because they are out without our consent, and have forfeited their rights thereby, that fact must be attended with a like forfeiture of our own. Nor would I, as already intimated, be understood as admitting that they are out as to foreign powers, who must respect our *title,* although our *possession* may be ousted, and treat the contest in all respects as a domestic one. No American of the right spirit would allow even a question of this sort to enter into our diplomatic correspondence with foreign powers, or consent to compromise our dignity and self-respect, which are at last the best security of nations, by uncovering the maternal bosom to the rude and insulting gaze of the stranger, and inviting his interference, either by misrepresenting the aims of our loyal citizens, or beseechingly deprecating his displeasure. I trust that our just pride as a people will not be again wounded by the production of another book like the diplomatic confessions of 1862.

It is suggested, however, by a gentleman from New York, on the other side of the House [Fernando Wood] that while we on this side are claiming to be for the Union, the enunciation of these doctrines by my able colleague [Thaddeus Stevens] amounts to a declaration that we are no longer a Union party. The meaning of this, if it means anything, is, that because the rebel States are *out,* without any agency of ours, but with a large share of the responsibility on the heads of those who, like the gentleman himself, encouraged the defection by their servility or by the assurance that they were opposed to coercion—as they oppose it now—and taught them to believe that they could go out with perfect impunity, and that New York and Pennsylvania would go out along with them—the mere statement of the fact that they were out is evidence that the party of the Administration on this floor is not in favor of the preservation of the Union! Well, we are in favor, at all events, of preserving all that is left of it, and intend, with the blessing of God, to win back the residue, and pass it through the fire until it shall come out purged of the malignant element that has unfitted it for freedom. But what does the honorable gentleman himself, what do those who vote with him really think on this subject? Does he, do they believe that the rebel States are not out? If he does not look upon them as a new and independent power in the commonwealth of nations why does he propose to

treat with them, not with the revolting States singly, but with "the authorities at Richmond"? How is it that in his own resolution he proposes, *in totidem verbis*, the "offer to the insurgents of an opportunity to *return to the Union*"? Who are the "authorities at Richmond"? Will he inform us whether they are a people known to our Constitution, or how these States are to *return* to the Union if they were never out of it? He stands, self-condemned by his own logic, as no Union man. I will allow him, however, the advantage of the admission that it is but a slipshod logic that cannot distinguish between the *law* and the *fact*. But that is true of himself and his party which he unjustly charges upon my colleague. The difference is just this, that, although the rebels have spurned and spit upon their Northern auxiliaries, rejected all their overtures, and declared that they will no longer associate with them upon any terms, and are not willing that they should even come "betwixt the wind and their nobility," he wishes to *treat* for the privilege of *serving* them, while we propose to *fight* for the purpose of chastising them into submission. This may be the result only of a difference of taste; but all history attests that there always are, as there always will be, men who love to wear the livery of a master, and are uncomfortable without it; who regard the collar as a badge of distinction, and would, at all events, rather carry it than quarrel with it. No wonder, therefore, at the opinion so often expressed by men of this sort in relation to the black man, that he would neither run away, nor bear arms against his master or anybody else. They did him injustice in supposing that he was like themselves. Pompey, who was an *involuntary* slave, is tending toward the north star with a musket in his hand, while his whole non-combatant substitute, a *voluntary* slave, is rushing southward with the olive-branch in his hand, into the patriarchal arms.

The objection rests, however, as I suppose, upon the remark that our right to deal with the rebel States after they shall have been reduced to submission by force of arms is not a question *under* the Constitution, but *outside* of it. I desire to say, once for all, that I do not concur in this opinion, because I find the war power *in* the Constitution with *all* its incidental consequences. If it is not there, the case is without remedy.

The doctrine of my colleague [Mr. Stevens], that these States are out of the Union, may seem at first blush extreme, but it is none the less palatable to me on that account. War is a radical disease, and radical diseases are to be treated only by radical means. One earnest and decided man is

worth, in times like these, a regiment of temporizers. Timid counsels have ruined many a state; they have never saved one, and never will. It may be a paradox, but if *conservatism* has ever operated to save a nation in such a crisis as ours, it has only been, as here, by acting as the dead-weight upon the plowshare, which has retarded its progress, but made it run so deep into the virgin soil as to make its work a *radical* one.

If these States are in the Union, with all their rights and privileges unimpaired, they may return to-morrow, even without submission, after being conquered in the field, to conquer their conquerors in the councils of the nation. The most accomplished of the Roman poets remarks that "conquered Greece subdued her barbarian conqueror, and introduced the arts into unpolished Latium." The contrary will be the case here. The barbarian will come back into your halls. The Northern Democrat will rush into his arms. The two elements, like kindred drops, by an attraction a good deal stronger than that of miscegenation, will melt incontinently into one. The old bargain will be renewed—"Give us the spoils, and you may take the honors and the power." The proclamation of freedom will be revoked; your acts of Congress repealed; your debt repudiated unless you will assume theirs; and yourselves, perhaps, ejected from these halls. And the effect will be that, for all your great expenditures and all your bloody sacrifices, you will have won back, not *peace,* but a master—the "old master," in negro phraseology—who governed you before—as turbulent, as vindictive, and as ferocious as ever.

Bring them back, and you cannot even bind them by gratitude, or purge them by oaths, of which they make no account, as the whole history of the rebellion, which began in perjury, abundantly shows—which are like the ribbons that were insultingly stretched by the Parisian mob in front of the Tuileries to protect the ill-fated king and queen of France—and which grave Senators have so recently denied your power to prescribe. The President has dealt kindly with the *neutrals.* Has he propitiated any of them? Our predecessors here have followed the example. Look at the facts attending our organization, and say whether even confidence and charity are followed by either gratitude or loyalty. No, you must throw the dissevered fragments, the "*disjecta membra*" of this great Government, into a caldron, with a hot fire beneath, and you may evaporate the virus, but not otherwise.

Taking them, however, to be *out,* or that the case has passed from under the municipal into the domain of public law, what is

the authority which that law gives us over the rights and property of an enemy?

On this point Bynkershoek says that "if we take for our guide nature, that great teacher of the law of nations, we shall find that anything is lawful against an enemy" (p. 2); and, further, that a nation that has injured another is considered, with everything that belongs to it, as being confiscated to the nation that receives the injury (p. 4); and also that, "if we follow the strict law of war, even immovables may be sold and their proceeds lodged in the public treasury, as is done with movables, though throughout almost all Europe immovables are only registered, that the treasury may receive during the war their rents and profits, and, at the termination of the war, the immovables themselves are by treaty restored to their former owners." The same doctrine is laid down by Wildmon (Vol. 2, p. 9); and in the case of Brown *vs.* The United States (8 Cranch, 110), the broad principle was assumed that war gave the sovereign full right to take the property of the enemy wherever found, and that the mitigations of this rigid rule, which the wise and humane policy of modern times has brought into practice, may more or less affect the exercise of the right, but cannot impair the right itself. By the law of nature and of nations the treatment of the conquered depends on the particular circumstances of the case; everything is lawful; everything belonging to the offending party is confiscated; the practice of nations has authorized the forfeiture even of the real estate of individuals; the conqueror may lay burdens on the conquered, not only by way of compensation, but of punishment; he may deprive them of their rights, and owes them no more than what humanity and equity require; he may indemnify himself for the expense and damages he has sustained; he may render them incapable of further mischief. *Indemnity, security,* and *punishment* are all, therefore, means of self-defence which may be legitimately used.

I think I may safely say that human history presents no parallel to this rebellion. Since the revolt of the rebel angels there has been no example of an insurrection so wanton, so wicked, so utterly causeless, and so indescribably ferocious and demoniac as the present. It was a rebellion against the majority rule for the purpose not of reforming, but of overthrowing the Government, and erecting upon its ruins another of an oligarchic cast, whose corner-stone was property in man. It was the product of a system which threw all the lands of the South into the hands of a few men. It involved an act of aggravated treason against a humane, paternal, and unoffending Govern-

ment. It has been conducted with a degree of inhumanity that has no example except in barbarian wars. It has involved to us an enormous expenditure of money and of blood. Its suppression has become impossible without removing the cause of strife, and disabling our enemy by liberating his slaves, and arming them against him. It cannot be repaired. There is no reparation possible that would be commensurate with the injury. Can you breathe new life into the bones that ornament the necks and fingers of Southern dames, or bleach unburied, without even the humble privilege of a grave, on Southern battlefields? Can you reclothe them with the comely vesture that has been given to the vultures of the Southern skies? Who shall restore the shattered limb; who fill the vacant chair at the family fireside; who give back the husband and the father, or dry the tears of the widow and the orphan? What trump, but that of the dread archangel, who gathers the tribes of the earth for the last solemn judgment, shall awaken the gallant dead who sleep in bloody garments, in their beds of glory, from their deep repose? Mock not the grief that is unutterable by the suggestion of indemnity or reparation! "Give me back my legions!" was the passionate exclamation of the Roman Augustus, when a swift messenger brought to him the tidings of the slaughter of Varus and his brave companions in the forests of Germany. "Give me back my children!" is the wailing cry that will burst from the bosom of the Northern mother, who weeps like Rachel for her first-born—or mock me not with the idea of reparation. There is no reparation for it, as there can be no punishment, except in the divestiture of the rights and the seizure of the estates of the guilty leaders. There is no security except in the distribution of the latter, and the complete exorcism of the hell-born and hell-deserving spirit that has wrought all this world-wide ruin.

Gentlemen object that to seize the inheritance would be to visit the sins of the guilty upon the innocent. They plead for the wife whose counsels have driven the husband into rebellion. They weep crocodile tears for the offspring who have been taught to spit upon the flag of their country. The widow and the children of those, however, who have fallen in the effort to suppress this unholy rebellion have no share in their sympathies. The chances of war may strip them of their inheritance, but that makes no difference with them. They take no account of the fact that nature and Providence have alike decreed that the sins of the fathers, and even their *misfortunes*, shall be visited upon their children, and that the law which authorizes the sale of the estate for the debts of the former has everywhere affirmed its

justice. The felon-brood may run its plowshare over the bones of the loyal martyr, while his children are perhaps eating the bread of charity in their Northern homes, and it is all right, because the former are the salt of the earth, and a just punishment would only exasperate them into a new rebellion. Let them rebel. A just poverty will render their efforts harmless, and, by teaching them the value and respectability of labor, make them only wiser and better men. With my consent they shall never trample upon the relics of a Northern soldier. I would carve out inheritances for his children upon the soil that his sword has ransomed, and his blood baptized and fertilized. God's justice demands it, and the heart and conscience of the American people will say Amen.

M. Russell Thayer [Pa.] spoke less vindictively than his colleague. He demanded the reconstruction of the seceded States: (1) guaranties of "unconditional and perpetual loyalty to the Government and subordination to its power"; (2) extirpation forever of slavery; and (3) compulsory repudiation of the rebel debt.

I for one am willing to extend to the people of those States, upon their returning to their allegiance, every benefit and of restoring to them every right which is consistent with the permanent reëstablishment of the authority of the United States. It is our duty to make the path to this object as easy as possible. Any such path, containing the necessary conditions for this purpose, will to most of them appear at first rugged and humiliating. This is the necessary result of their failure to overthrow the Government of the United States. It is necessary to guard the elective franchise and the privilege of holding office in those States against the intrusion and treachery of all who have in any sense been leaders in the present rebellion. For this purpose prudence requires that all who have held office under the pretended rebel government should be excluded from these privileges. It does not, however, appear to me to be necessary to exclude *all* who have held office under the *State* governments. The chief officers of those governments, such as governors and other high officers, all of whom have been chief actors in the rebellion and have promoted it by every means in their power, should be excluded; but I do not believe that either necessity or sound policy requires the exclusion of the large number of ministerial subordinates who have participated in the adminis-

tration of local affairs, who have not been leaders of the rebellion, and who are willing to return to their allegiance to the United States.

To all other classes of the free male white population of these States I would confidently surrender the privileges of the elective franchise and the same rights of citizenship which we ourselves enjoy, upon their laying down their arms and returning to their true allegiance. Nothing, I believe, could be further from the wishes of the people of the United States than to deprive the masses of the Southern people, who are willing to return to their allegiance to the Government of their fathers, of one solitary right which they themselves enjoy.

The compulsory repudiation of the rebel debt is a just and merited punishment to be inflicted upon those who have lent substantial aid to the rebellion; and it has the further merit that it reaches with its retributive justice those foreign speculators in our sufferings who, at a safe distance, have wickedly connived at, encouraged, and aided in the attempt to break in pieces our nationality, and to destroy our free institutions. I would not, however, in doing this, unsettle any State debt which may have been contracted for the purpose only of carrying on the civil affairs of the State, and which had not for its object the prosecution of the war or the strengthening of the pretended confederacy.

That slavery must, as a necessary consequence of this war, forever disappear from the American Republic I believe to be a conclusion long since reached by a large majority of the loyal people of the United States. So far as relates to the border States, which have nobly stood by their allegiance to the National Government, I am not in favor of any interference with it, because under our present Constitution we have no such right of interference, and honor and duty alike require that we should refrain from such interference. I am in favor of leaving to the people of those States the entire control and management of this question. I fully believe that they will find it for their interest and welfare at no great distance of time to make their institutions in this respect correspond with those of the free States. The recent action of the people of Maryland upon this subject, by which, on the 6th day of April, they declared themselves by a large majority in favor of immediate emancipation, and thus forever destroyed the political significance of Mason and Dixon's line, gives assurance, I believe, of what will be the ultimate action of the people of all the border States in reference to this matter.

Thaddeus Stevens [Pa.] upheld his theory that the seceded States were *de facto* out of the Union, and replied to those (especially Francis P. Blair, Jr.) who had denounced him as a "secessionist."

Gentlemen deny that the rebel States, so far as they are concerned, are out of the Union. It follows that, being in the Union, they have all the rights of other States. If they have such rights and should come here at the next presidential election and claim them, where does such doctrine lead you to? It leads you into subjection to traitors and their Northern allies. If they are in the Union, where are their representatives on this floor? Every one of the United States is entitled to have members here and Senators in the other branch. Where are these evidences of existing States? They are at Richmond, where the Congress of the Union does not sit.

But it is said that the Constitution does not allow them to go out of the Union. That is true, and in going out they committed a crime for which we are now punishing them with fire and sword. What are we making war upon them for? For seceding, for going out of the Union against law. The law forbids a man to rob or murder, and yet robbery and murder exist *de facto* but not *de jure.*

The gentleman from Missouri says that those who declare the States outlawed to the Union preach the doctrine of secession as much as Jeff. Davis. Does the man who declares that murder or larceny exists give countenance to those felonies? The one is as reasonable a deduction as the other. If the fiction sometimes used in courts of equity that whatever ought to be shall be considered as existing be true in fact, then the rebel States are in the Union. If the naked facts palpable to every eye, attested by many a bloody battlefield, and recorded by every day's hostile legislation both in Washington and Richmond, are to prevail, then the rebellious States are no more in the Union, *in fact,* than the loyal States are in the Confederate States. Nor should they ever be treated so until they repent and are rebaptized into the National Union.

The gentleman from Missouri, fatally bent on mischief, anxious to distract and destroy the Republican party, and to alienate the President from his true friends, that he and his household may reign supreme, speaks of our attempts to sacrifice the whites to the blacks, to introduce amalgamation of the races, and to create negro equality. When the gentleman thus accuses the Republican party he knows that he utters a foul and malignant

libel. The Republican party never held such doctrines, never uttered such a wish. I rejoice that in the vote which was taken soon after his speech not a man was found with him who ever belonged to the Republican party. He only was found voting with the hereditary enemies of the Administration. That was right. "He went to his place."

The gentleman speaks of my remarks as an "entanglement of contradiction" and " a catalogue of inconsistencies." As this touches only my capacity for argument, I take no offence at it. The gentleman cannot think more humbly of my abilities than I do myself. When he comes to speak of motives, however, it is a different thing. To show the temper which animated him I will give a few extracts from his carefully prepared speech. He says:

> "No gentleman, either North or South, ever asserted the secession cause so boldly in the forum as the gentleman from Pennsylvania. It looks like an attempt to play into the hands of some rival candidate for the presidency, who would array a party against the President to drive him to surrender his convictions and break his oath to support the Constitution. I am apprehensive that the gentleman is anxious to saddle the President with the odium of doctrines which are known to be those of rival aspirants for the presidency."

The gentleman says that the Republicans do not agree with the President on the question of colonization; that he is for the segregation of the races, while we are for leaving them on the soil to cultivate it for wages. In that he is probably correct. There is a difference of opinion among the friends of freedom on that question. But that does not imply hostility to each other. It is a question on which men may honestly differ. I have never favored colonization except as a means of introducing civilization into Africa. Its effect upon slavery was injurious. It was a salve to the consciences of slaveholders and their advocates. As a means of removing the Africans from the country it was puerile. All the revenue of the United States would not pay for the transportation of one half their annual increase. The scheme of colonizing them in South America (which, I believe, was the gentleman's plan) was a very shallow vision. They were averse to removing from their native land; their forcible expatriation would be as atrocious a crime as stealing them in Africa and reducing them to bondage. Five hundred were lately seduced to go to an island near St. Domingo. Such as have not died in six months have been brought back at our expense. I hope this will be the last of the unwise and cruel

schemes of colonization which were fostered and procured by the gentleman's advice.

As to rival candidates for the presidency I know of none such. I do not believe that the present discreet Executive has made any movement or expressed any wish for reëlection. I think the same of all the members of the Cabinet. I suppose that no man, whether in or out of the Cabinet, would oppose his wish to the will of the people if they should call upon him to serve. But his appetite for office must be morbid who would covet the presidential chair in these troublesome times unless he believed he could render essential service to the nation.

The charge that these principles are invented to serve a presidential candidate is absurd. I held and promulgated precisely the same doctrine in 1861 when there was no thought of the presidential election. I believe now among the people there is entire unanimity. Every man, except the friends of the great Cunctator [Gen. McClellan], believes Mr. Lincoln to be an honest and patriotic man, and, so far as I have observed, looks to him to end this rebellion and extirpate slavery. I do not believe he is in any danger of becoming unpopular through his own acts; nor do I believe that even the constant boast by the gentleman from Missouri and his kindred that they are the especial friends and organs of the President can sink him. If that cannot, certainly nothing else can.

Francis Kernan [Dem.], of New York, spoke against the bill.

By the provisions of the bill, although the one-tenth or one-half or all the citizens of one of these States shall cease all resistance, submit to the authority of the Constitution and laws of the United States, and take the oath of allegiance required, they are not permitted to resume the administration of their State government under its old constitution, or to be represented in the Federal Government, or to frame a new constitution for their State, in accordance with that of the United States, unless they incorporate in that new constitution certain provisions which by this bill we dictate to them, and which relate to matters within the exclusive authority of the people of the State.

James M. Ashley [O.].—I desire to say to the gentleman from New York that so far as the House committee are concerned they have determined to make the same requirements apply to all States alike hereafter to be admitted. Colorado, Ne-

braska, and Nevada are all required to comply with these same conditions.

Mr. Kernan.—The admission of a State formed out of territory belonging to the United States is not a parallel case. The States to which the bill under consideration is to apply are *existing* States; the bill recognizes them as such. They are not to be readmitted to the Union; they are now in law a part of the Union. We are carrying on this war to enforce the authority of the Constitution and laws over them. When resistance ceases, when the usurped authority of those in rebellion in these States is overthrown, the constitution and laws of the State which existed when the rebellion arose will be again in force and vigor, and should be administered by those citizens of the State who never joined in the rebellion, and those who by amnesty are relieved from the penalties of treason.

Mr. Speaker, in my judgment this bill is in violation and subversive of the fundamental principles upon which both our national and State Governments are founded.

The powers granted to the Government of the United States by the Constitution were confined to national purposes and objects. As to these powers it is sovereign and supreme, and rightfully commands and can compel the obedience of every citizen of every State. But it has no right to interfere with the people of any State in the formation or administration of their State government. Congress has no right to dictate to a State what shall be the provisions of its State constitution. When Congress does so, and the Federal Government attempts to compel the people of the States to submit to its decrees in this respect, a revolution is attempted in the Government as it was established under the Constitution. The sole power granted to the national in reference to State governments is contained in the clause by which each State is to be guaranteed a republican form of government. Subject to this provision, or condition, the right of the people of each State to retain the old or form a new State constitution and government is absolute.

If Congress may impose upon the people of a State the conditions prescribed by this bill as conditions precedent to the exercise of their right to maintain, form, or administer a State government, we may require them to ordain as a part of a State constitution almost any other provision. Congress has no such power. The Constitution of the United States is based upon preexisting State governments which the people of the respective States may maintain or change at pleasure, being only bound to have them republican in character, subject to the Constitution

and within the Union. This bill is in direct conflict with and subversive of all these principles and rights. It prohibits the loyal citizens of a State in which the rebellion has existed from administering their State government under and in subordination to the United States Constitution and laws after the rebellion has been suppressed and all disloyal men expelled from the exercise of their usurped power. It prohibits the loyal citizens of the State from reorganizing their State government by the adoption of a new State constitution and electing their State officers, except and unless they will incorporate in such constitution provisions not required by the Federal Constitution, and which are prescribed by a majority of the people of other States acting through their Representatives in Congress. Until they will do this, no matter how loyal to the Union the majority or all of them may have become, they are to be governed and controlled as to all their State affairs by arbitrary military power responsible only to the President of the United States. Nay, until they will comply with the conditions we prescribe they are not to be allowed Representatives in the Congress of the United States. They are as absolutely the subjects of despotic power as were the inhabitants of the Roman provinces who were plundered and tyrannized over by military governors like Verres. And yet this bill is called one "to guarantee to the people of these States a republican form of government!!"

I have supposed we were striving to maintain our old governments, national and State, in all their beautiful harmony, and with all their nicely balanced powers and wisely constructed checks; that this was war prosecuted to preserve these, and secure the blessings they did in the past, and will in the future, confer upon us as a people. But if this bill passes and is put in force, we will have destroyed the system of government transmitted to us, and commenced the construction of a consolidated National Government which will soon extinguish the States and, I fear, the essential liberties of their people. How long, think you, will the people of the Northern States bear patiently the burdens and sacrifices of this destructive war for the accomplishment of such a purpose?

When rebellious citizens have usurped the administration of the State government, turned its powers against the Federal Government and compelled the minority of the people to submit to their usurpation, the duty and the sole authority of the United States is to overthrow the power of the usurpers and restore the loyal people, or the people who, under promise of amnesty, submit to the identical State government the protection and ad-

ministration of which they were deprived for a time by the insurrection or rebellion. But the United States has no authority or right, when the rebellion is suppressed and all illegal resistance overcome, to say, as we do by this bill, to the loyal people of the State, We will not restore or guarantee to you the republican State government which you had established rightfully, and which existed when the usurpers deprived you of its administration, but we will compel you to form another according to our dictation; and if, as freemen, knowing your rights, you refuse to comply, we will deprive you of all political rights and privileges in national or State affairs, and govern you by military power until you submit.

It seems to me that in pursuing this course, so far from guaranteeing to them the republican government which they had rightfully formed for their State, we aid the usurpers and rebels in overturning the legitimate preëxisting State governments, by effectually completing what they began.

We are bound to secure to the people of each State under such State government as they shall see fit to establish, subject to the Constitution of the United States, the right to administer their own affairs, the right to enact and change their own laws as to all local matters. We have guaranteed that to them, and we must keep our guarantee, at least to the loyal men. For my part, I say that we are bound to do it if there are but a hundred men in the State who have stood by the Union.

It is said that these State governments have been overthrown, and therefore the general Government has a right to assume this power. It seems to me that all that can be justly claimed is that rebellious men, disloyal men, revolutionary men, have seized upon the machinery of the State government.

I wish to see our armies conquer the rebel armies, and drive out the usurpers who have been carrying on this rebellion. The people of these States must be required to submit to all the United States laws. We must insist that they submit to all the laws in relation to the revenue, in relation to the currency, the post office, and all other subjects within the jurisdiction of the Federal Government. When they do this there is no necessity that we should, nor in my judgment have we any right to, interfere as to their State governments. They have a right to maintain them as they were when the rebellion commenced, or they may change them.

Mr. Speaker, I am aware that it is sometimes said here that the institution of slavery as it exists in these States is inconsistent with "republican Government," and that therefore under

the clause of the Constitution above quoted Congress has a right to compel the people of the States to abolish it.

Sir, I am no admirer or advocate of slavery. I object to it, believing it to be a great moral and political evil—a wrong to the slave, and, in the long run, a curse to the master. I shall rejoice to see it abolished, if it is done without violating the Constitution of the United States or interfering with the reserved rights of the people of the States to regulate their local institutions. We should not violate the Constitution of the United States nor imperil the perpetuity of the Union under it to interfere with it where it exists in the States. We of the non-slave-holding States are not responsible for it, nor are we likely to deal with it wisely for the benefit of the slave or for the peace of the country.

But it is too plain for argument that the institution of slavery as it has existed in the States of the Union is compatible with a republican Government within the meaning of the United States Constitution. The States which adopted it were slave States mainly, and the continuance or abolition of the institution was carefully reserved to the people of each State. But the Government which is prescribed to the people of the States by this bill is, in its origin, in violation of the spirit of republicanism. What is a "republican form of government"?

Madison, in the thirty-ninth number of "The Federalist," asks and answers the question:

> "What, then, are the distinctive characters of the Republican form?" . . . "If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers, directly or indirectly, from the great body of the people." . . . "It is *essential* to such a government that it be derived from the great body of the society." . . . "It is *sufficient* for such a government that the persons administering it be appointed either directly or indirectly by the people."

Can there be any doubt, therefore, that the governments in existence in these States at the time the rebellion was inaugurated were republican within the meaning of the Constitution? To make them such it is essential that they be derived from the people governed, not imposed upon them by other governments, States, or people. Nevertheless, we propose by this bill, under the pretence of fulfilling our guaranty to them of a republican form of government, to compel them to adopt a constitution and government as to their local State matters, not originating from themselves, or in accordance with their wishes, but dictated to

them by us; and we will trample upon all their rights, and rule over them by our appointees, levying upon and collecting taxes from them for our treasury without their having any representation until they do our bidding in reference to the details of their State constitution. This is indeed guaranteeing to them a new kind of republican government! Are we willing to occupy the position before the world, or the American people, in which the passage of this bill will place us? I hope not. Let us suppress the rebellion in these States; drive out those who have usurped the State government, and restore it and the administration of it to those who have been loyal always in their hearts, I trust and believe many such will be found, and to those whom we think it wise and proper to recognize as citizens in each of those States under an amnesty.

Daniel W. Gooch [Mass.] supported the bill, particularly that part of it which established a military government for the seceded States until such time as the civil government was reconstructed.

As the government which has given its adhesion to the rebel confederacy can never be recognized by the United States, a new government must be organized during the military occupation, which can, at the proper time, be recognized by Congress. All these acts by the President, or the military power under him, in thus aiding and assisting the loyal people in these States, impose no obligation upon Congress to recognize them until such time as it shall deem proper to do so, and any recognition the military power may see fit to give to these governments can never fix their status in the Union. Congress alone has the power to determine what government is the legitimate one in a State, and its decision is binding on the other departments of the Government. The opinion of the Supreme Court of the United States in Luther *vs.* Borden *et al.* is precisely to this point:

"Under this article of the Constitution [article four, section four] it rests with Congress to decide what government is the established one in a State. For as the United States guarantee to each State a Republican form of government, Congress must necessarily decide what government is established in the State before it can be determined whether it is Republican or not. And when the Senators and Representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government and could not be questioned in a judicial tribunal."

The question of the recognition of a government in one of the revolted States does not differ at all from the question of recognition of the government in any State in which the legitimate government has been interrupted, overthrown, or destroyed, and the Federal power invoked to determine which the established and legitimate government is. The question is a political one, and is to be decided by Congress, not by the Executive or the judiciary, and the most authoritative decision which Congress can give to the question is the admission of Senators and Representatives to seats in the councils of the nation; and, as each House is the judge of the elections, returns, and qualifications of its members, each must determine for itself what government it will recognize as the established one in any State, and when the Senate and the House have by the admission of members to seats decided in favor of the same government in any State the question is settled, and the decision binding on the other departments of this Government.

Nehemiah Perry [Dem.], of New Jersey, opposed the bill. He declared that it was a "political artifice" intended for effect in the coming presidential election.

The operation of this scheme would be, by a political fiction, to bring back the whole State into apparent but unreal relation with the Union, enable it, or the fragment acting in its name, to elect United States Senators, and by pretended elections to send its full complement of Representatives to the House of Representatives. And here the President's design is perfectly evident, to secure a majority of the delegates to the nominating convention of his party, and to provide for his own election by the House of Representatives in the event of there not being an election by the people. By this plan the narrow foothold maintained by our armies in North Carolina, Louisiana, Texas, Alabama, Florida, Arkansas, and elsewhere may send the pretended full delegations of those States to this House.

But, Mr. Speaker, this plan to "reëstablish" State governments is based on the assumption that they have been destroyed. This, sir, I deny; nor can they be destroyed unless the rebels are finally victorious, and establish their independence.. We may be utterly destroyed by a superior power, State after State might be overrun, our capital might be captured and destroyed, but in such a case only can our Constitution be torn in fragments or our Union destroyed. When we have absolutely succumbed to the power of an enemy all our institutions will

crumble into one fatal ruin, and our glorious democratic Republic be consolidated into the kingdom of a tyrant. But till this happens our Union and Constitution possess a principle of perpetual vitality, no death of a State and no severance of it from the Union. The life-blood may cease to flow for a time between the center and the extremities, but immediately on the removal of those hindrances and obstructions the life-bearing current will again leap through vein and artery, and the whole frame will once more rejoice in renewed health and vigor.

Fernando Wood [Dem.], of New York, opposed the bill.

I contend that, whatever may become of the Federal Union, the States themselves have a positive existence. The Federal Union is the creation of the States, and hence cannot become more powerful than the creator. The States which claim the right to withdraw from the Union do not alter their positions as States; they retain the same attitude toward each other that they held anterior to the American Revolution and to the adoption of the Constitution. In seceding from the Union they are, therefore, still distinct political communities with their own State constitutions and forms of government deriving authority from the people. Whatever doubt as to their relation to the Federal Government, there can be none as to their relation to each other and as to their individual local domestic independence.

William D. Kelley [Pa.] supported the theory of his colleague, Mr. Stevens, that the States in seceding had neither retained nor resumed their individual sovereignty, but had committed suicide in so far as their constitutional rights were concerned, and were in the status of Territories.

Is there a State of South Carolina? Pray who represents it on this floor? Who in the other end of the Capitol? Will you tell me what judge comes from a circuit whereof that State is a part to sit in the councils of our Supreme Court, or what judge holding authority from the President and Senate of the United States administers the laws in its district court? Who or where are the marshals, collectors of its ports, or postmasters, who hold power from our Government and act in its name and behalf? So, too, of the other confederated States. Where or how do you feel the influence of any of them in this Government? How do

you enforce the Constitution and laws within the territory once governed by the constitutions of those States? Ah, sir, the sovereign people, or, to speak more precisely, the political people of each of those States, have overthrown the State. Through its corporate power each State destroyed its corporate life, and no one of them exists.

Sir, the destruction of a State by the severance of the constitutional ligaments that bind it to this Government is one thing; but the government of the people upon the territory, the ultimate right to govern, is quite another. The sovereign right of eminent domain is not with the State. Do not, therefore, let me be misunderstood as arguing that the people of a State may oust the jurisdiction and right of the nation, or transfer any territory within the limits or jurisdiction of the United States to a foreign power. They cannot. Nor can they take themselves out of the jurisdiction of the country unless they leave the limits of its territory. To permit this would be to dissolve our Government; and whoever attempts it must be punished as a traitor. The President and Congress of the United States are bound to resist such an attempt, though it require the expenditure of every able-bodied man and the last dollar of treasure. Their oath to support and defend the Constitution binds them to reconquer possession of territory which is attempted to be thus taken from the people and the Government, as it does to defend the country against any other foe who strikes at the nation's life or attempts to divide its territory.

But the people of our once sister States have not merely destroyed their State governments; they have established others, unrecognized by our Constitution, and have confederated in a foreign and hostile government. Thus they are alien enemies, though they occupy territory within the limits of the Union. That territory belongs to the people of the Union and their posterity through all time, and none but a traitor or coward would surrender it.

The States are out of the Union, but the territory belongs to the United States, and the people, if they remain upon it, must be governed by the Constitution and laws of the United States. The State constitutions having been overthrown, it belongs to Congress to provide for the reconquest of the territory and for its government; and it is the duty of the Executive to effect that conquest by any and all means which are known to modern warfare and are within the law of nations. These are the only limitations, not only upon the power, but upon the duty of the Government.

Mr. Kelley then stated that, according to this theory, new States might be constructed out of the seceded territory not necessarily coterminus with the old ones.

I care not whether the States to be instituted be as large as Texas or as small as Delaware. When any given portion of the country shall be peopled by loyal men, who shall meet in convention and adopt a constitution and present it to Congress asking admission into the Union, it will be our duty to consider the constitution and to determine on the question of admission. Neither the Constitution nor the President's amnesty proclamation makes it necessary that the limits or name of a future State shall be determined by what existed prior to the overthrow of the now rebellious States.

On May 4 Samuel S. Cox [O.] spoke against the bill.

These plans of regeneration involve a change in the structure of the Government. They break down the spirit of municipal independence, in destroying which, as De Tocqueville has shown, you destroy the spirit of liberty. No matter what form is left, the despotic tendency will inevitably appear when the local authority is usurped. If you leave any form of government, it is the will of the Executive, it is a despotic centralization: Russian, Asiatic, the rule of military bashaws or provincial kinglets. Whether appointed by Congress or the President they hold their power from Washington, and they must remain at the head of their troops, and at the call of their chief. Our Republic, then, deserves not its name. It is no longer the "United States." It is a united State, a geographical unit, holding together subject provinces by the brute force of petty tyrants.

Believing that the scope and aim of the proclamation will not restore the Union nor propitiate any portion of the South, except demagogues and hirelings, who sell their birthright for the price of power, let us inquire what motive could have induced the President to proclaim it, in a moment of success to our arms and depression to the South. One suggestion will satisfy as to the motive. I am sorry to believe it; but the President desires renomination. He is a man whose mind has every angle but the right angle. In his nature cunning contends with fanaticism. From the time he developed his irrepressible conflict doctrine, so much praised by the gentleman from Illinois [Mr. Arnold], until its latest expression in his last message, his course has been equivocal. But meanwhile how shrewdly he has

balanced between the factions of his party. His inaugural recognized his obligations to the Constitution. He would not interfere with slavery. How prodigal were his promises to the border. How quick to plant his foot on Phelps, Hunter, and Frémont, for playing Augustulus. He desired some day to play Augustus. Abolitionism should be hatched under no influences but his own. How he lectured one of his editors for impatience. Conservatives held up his hands while he prevailed against these radicals. He toyed with emigration, colonization, and compensation schemes. He made a gradual emancipation theory with a short fuse which soon exploded. It hurt no one. But the time came for him to play revolutionist; and with seeming reluctance he issued the proclamation of emancipation. He desired the people to pass on it. They did. They condemned it in 1862. He adhered to it. In his Springfield letter, and in his last message, he dedicates all power to its execution. Meanwhile, a contest springs up as to the State suicide doctrine. It divides his party, and even the Cabinet. He has Missouri on his hands. Radicals are rampant. He acts conservative a while until the days of November, 1864, begin to approach, then, lo! this message as the climax of his long series of ambiguities. That I may do the President no injustice, I quote from his own partisan, Senator Samuel C. Pomeroy [Kan.], in his circular, who says:

> "The people have lost all confidence in Mr. Lincoln's ability to suppress the rebellion and restore the Union. He has been weak and vacillating, wasteful of national blood and treasure, profligate and corrupt."

There is only one solution for these inconsistencies. He is trying to please both wings of his party to secure his nomination. With dexterous chicanery he has phrased and framed his late plan so that it may admit of two voices. He will not give up his emancipation proclamation or the confiscation and penal laws. "To abandon them now," he says, "would be not only to relinquish a lever of power, but would also be a cruel and an astounding breach of faith." This should suit the radicals. For a lighter shade of his party he promises what is a mere delusion —an adjudication of the questions of their legality by the Supreme Court. True, he has declared all means like these which he now promulgates unconstitutional; yet he would submit them to the court! When, and how? Why, after he has made the slave a freedman by the sword! What a mockery is such a submission. But it will do to make him a candidate, and, more than that, it might elect him President. If his plan of making one tenth rule in the States should succeed, then he will have

ready at hand the electoral votes of Florida, Arkansas, Louisiana, Tennessee, North Carolina, and other States. He began this business in Florida the other day, and the blood which flowed at Olustee is the result of this scheme of personal ambition!

Surely a candidate with so fair a chance for a gigantic, almost a continental fraud as this, must commend himself to a party whose use of power has made a debt of $2,000,000,000 and an expenditure equal to the expenditure of all former Administrations. Hence, when this amnesty to rebels was announced, it was regarded as a political movement only, and the excitement did not equal that of a prize fight. No one was affected by it. It was nothing but a bold attempt to perpetuate power, at the hazard of revolutionary war in the North and protracted war in the South.

The pretence of the President is to reconstruct the Union. Where did he get his authority to build anew what we can never agree has been destroyed? Is it a part of the war power or the pardoning power? It is the "best mode the Executive can suggest, with his present impressions." Will any one point out the clause of the Constitution which would even create an "impression" that the Executive has the function either of lawgiver, State constructor, or supreme dictator? His meekness in referring to Congress and the judiciary the legality of his acts after they are accomplished is a piece of effrontery to which Louis Napoleon has not yet arrived. Where did this unfledged Cæsar get his warrant to create sovereignty?

I propose to discuss the President's plan in the following order:

First, the oath; second, the republican form of the government to be reconstructed; third, the question whether the State governments in the rebel States are vital; fourth, some wise and practical plan such as will aid in restoring the Union under the Constitution.

1. *The oath.*—There is a sort of *odium historicum* attached to all political test oaths. They are not original with the President. They have been the bane and foil of good government ever since bigotry began and revenge ruled. You cannot make eight million people, nearly all in revolt at what they regard as the detestable usurpations of abolition, forswear their hatred to abolition.

The abolition oath is the basis of the new republican form of government. All who do not agree to that are excluded. All who do not agree to the pestilent theory of State death are also excluded. Hence this plan would allow any recent rebel who

takes the oath to make a unit in the one-tenth, and excludes the Union man, who has not forsworn his faith in the vitality of the States, and who will not swear to support policies and laws to which he can never adhere. What becomes of the many thousand loyal men of Tennessee, of Texas, of North Carolina, of Arkansas, of Louisiana? They are set aside for those whose oaths will bind them long enough to vote, and who, to save their lives and property, will swear with facility. Going upon the doctrine that all the rebellious districts are unsound, assuming the ground that the territory South, being belligerent, outlaws all, whether loyal or not, the President applies this bitter cup to the Union men who have never flinched in their love for the flag. These men must quaff the cup of bitter waters before they can stand before the world as the builders of the new temple proposed by the President! If they were worthy of association in this great cohort of States they would scorn reënfranchisement by such a plan. If there were no other reason to reject this juggling scheme, justice to "the faithful found among the faithless" South would demand its rejection.

The truth is, a test oath to require citizens to support his policy as to slaves is not an oath of allegiance to republican government, but to the Republican party. It is an oath of fealty to Abraham Lincoln. He sends out heralds to proclaim: "Ho! ye; all who will prepare to forswear your sentiments and enter into an arrangement to make new States with one-tenth over nine-tenths, and thus form electoral colleges to vote for me, I swear by my army and navy that you, though you are pardoned criminals, shall be the corner-stones in the new States, and shall have the shield of the Executive and the protection of the flag!" In vain we search Spanish-American annals for so shameless a pronunciamento for revolution and anarchy. It is thus, Mr. Speaker, that your party seeks to unhinge the massive portals which lead within the chambers of reserved popular power, those doors which, for so many years on golden hinges turning, opened so readily to the States as they entered within the sacred adytum of our political faith.

There is one answer to these propositions always on the lip of the anti-slavery devotee. He holds that no slave State can be accounted republican. This would be news, indeed, to the Jeffersons, Washingtons, Madisons, and Adamses, who established these States as republican, twelve out of thirteen being slave at the outset. This would be news, indeed, to the pioneers of the Northwest, to the early settlers of Ohio, who remember the deed of cession of Virginia, whereby our sovereignty was forever

declared to be equal to and inviolate as that of the slave State of Virginia.

But what sort of republicanism is that which builds a State from a small minority of its people? The majority of a people, expressing its own will, forms a republic. A minority, or even a majority, following the will of a despot, forms a monarchy. One-tenth of the legal voters ruling nine-tenths is an oligarchy. Reconstruction of republican governments on such a basis is as absurd as the structures built by the architects in Gulliver, who began their houses at the roof in the air! The President quotes the guaranty of the Constitution as to republican State governments, and promises under its sanction protection to these pseudo-republics! But he forgets that, if the Southern States are deceased, or out of the Union, there is the third section of article fourth of the Constitution which provides for the admission of States. Does the President in his theory propose to disregard this clause? Unless Congress consent all these scaffoldings, erected by his own will, will tumble to naught. If States can be declared dead, or burned out by the fires of war, perhaps New England may some day find her theory come home, in a reconstruction of her six States into one, and the reduction of her twelve Senators into two! Lines of longitude, as well as of latitude, may sometimes reconstruct States.

The basis of our Federal Government is *States,* having constitutions and laws—the emanation of the popular will. This will is expressed through suffrage. This suffrage in States is regulated by their own constitution and laws. State voters thus qualified, and they only, can vote for members of Congress. When, therefore, the President undertakes to breathe into a State the breath of life by a new code of suffrage, even if the State were defunct, he usurps a power never granted, and a sovereignty belonging solely to the people. If these States in rebellion are destroyed—if the *tabula rasa* remains, upon which the President can write new constitutions, with new qualifications for voters—then secession and revolution have done legally what no one but a rebel or traitor ever believed could be done.

This brings me to the radical question of the day. The message of the President and the bill of the gentleman from Maryland assume that the State governments in the rebel States are out of existence or usurped, and that the territory should be governed as such by the United States until new State governments shall be formed. The President does not commit himself to this plan as the only one. Very well. But one thing he has assumed—that the old States are gone. But let us do him

justice. He suggests that on "reconstructing a loyal State government in any State, the name of the State, boundary, the subdivisions, etc., may be maintained"; provided always the abolition policy prevail. This is like the prescript of the old Sultan, who, in commanding an obnoxious vizier to be ensacked and thrown into the Bosporus, generously hoped his turban and clothes might remain unmoistened.

I know it is said that he repudiates the policy of reducing the States to Territories. His plan is to select, as nearly as may be, the old building spot; perhaps use some of the old foundations, say one-tenth; but he changes radically the plan and structure of the building, and takes away from its lord the sovereign control of the establishment. He insists that there shall be homogeneity of arrangement in the structure; that for different conditions, classes, systems, climate, and position the same relations shall be instituted. This plan is not only absurd in philosophy, unsound in economy, but revolutionary in practice. He, in fact, says, "I shall fight on to keep the Southern States *out* until they conform to my views as to negroes. My abolition condition to Union is inexorable! The proclamation shall be on a par with the Constitution. Let no one bleed for one without dying for the other!" God help the nation, plunged in an abyss of blood, for such crudities!

Surely, if the State suicide doctrine be sound, this plan of rebuilding is not. Let me consider that State suicide doctrine. It professes to be based on the decision of the Supreme Court in the *Hiawatha* case. That decision is perverted to sustain this theory. The court condemned certain property captured, because the property was within the lines of the enemy actually holding those lines by force, though without right, and not because of the moral or political relation of the owner. The court decided nothing as to the legal and political status of the owner, but because the property would help the enemy it was to be taken as prize of war. There is in that decision no recognition of the right of secession, much less of the monstrous and cruel doctrine that rebels in arms can abolish the legal rights of loyal men or the institutions of States.

If war blots out the States insurgent by virtue of its territorial and belligerent character, then war does by its violence what secession would do by its ordinances. The right to expunge a State is coördinate with the right to secede. If a State can be forced out by the vote of its own sovereignty or by combinations of men without a constitutional amendment, then any State can be expelled by Federal action. If the Union becomes

disagreeable to a State, then the State may become disagreeable to the Union; and, if a State may retire at pleasure, why cannot a State be repudiated at will? These rights, if they exist, which I deny, correlate. They are inseparable. Suppose it had been proposed to expel South Carolina from the Union for her contumacy, or Massachusetts for her intermeddling, what a burst of indignation we should have had from each! They would have exclaimed: "Show us the power to throttle our State sovereignty by denying us participation in this blessed Union. What! strip us of our American citizenship, place us outside of your navigation and commercial laws and treaties; leave us at the mercy of foreign powers; belittle us to nothing; rob us of our common interests in a common treasure, territory, government, history, and glory. Never!" Yet wherein does this claim of holding these States South as conquered provinces by military force, degrading the equal dignity of the States by the creation of a new sovereign power, differ in principle from secession?

If secession be a nullity, and if the Constitution is not impaired nor the rights of the States destroyed, then I can see how arms, inspired by wise and persuasive measures, may, in time, redeem the States; but, on the other theory, all the tears, miseries, confiscations, and blood are in vain, in vain, in vain. Can we be surprised, therefore, that an analytic mind like that of the Postmaster-General should have at once descried in these fallacies of abolition a conspiracy in aid of the rebellion?

How, then, is it possible to restore local and State sovereignty and thus unite our hapless and lacerated country? History never presented so grand a problem for statesmanship. I approach it with something of that awe which solemnizes the soul when we enter within some vast and consecrated fabric—vistas and aisles of thought opening on every side, pillars and niches and cells within cells, mixing in seeming confusion, but all really in harmony, and rich with a light streaming through the dim forms of the past, and blessed with an effluence from God, though dimmed and half lost in the contaminated reason and passion of man.

Conscious of the magnitude of this rebellion, and oppressed with the feebleness of the policy directed against it, I still believe in the restoration of the old Union. Hence, whatever method I should advocate for the conduct of the war, or the celebration of peace, I am forever concluded against one conclusion—the independence of the South. I believe the principle of unity to be absolutely superior to the right of sectional na-

tionality. The destiny of these United States is to continue united, and, perhaps, to add other States, until the whole continent is in alliance. Our fate is to expand and not to contract our influence or our limits. All other notions are but transitory and evanescent.

I am happy to be in accord with the President, if, indeed, he hold yet to the doctrine announced in his inaugural: "Physically speaking, we cannot separate." I had adopted the same sentiment, that there were Union foundations, by the very political geology of God, upon which the old Union could and would be rebuilt.

The sentiments of the President in his inaugural are founded in principle, and drawn by correct deductions from history. They are the germ of all true politics. Sorry am I that in a moment of pressure and temptation he should have been drawn from them by the weird whisperings of ambition under the baleful eclipse of fanaticism.

Military rule, anarchy, destruction of individual opinion, speech, and liberty will be our experiences, unless we take the straight, short, and right line of the Constitution. We may wander forty years in a political wilderness before we attain the promise of our youthful and exultant nationality.

Before attempting to show how this nationality may be restored, it would be best to define it. What, then, is nationality? Let the definition of the English logician, John Stuart Mill, answer: "We mean a principle of sympathy, not of hostility; of union, not of separation. We mean a feeling of common interest among those who live under the same government, and are contained within the same natural or historical boundaries. We mean that one part of the community shall not consider themselves as foreigners with regard to another part; that *they shall cherish the tie which holds them together; shall feel that they are one people; that their lot is cast together; that evil to any of their fellow-countrymen is evil to themselves; and that they cannot selfishly free themselves from their share of any common inconvenience by severing the connection.*"

Is it not strange to a dispassionate thinker that those who are not hostile in the sense of hate to the South, those who would woo them to the ancient order and Union by reason, old associations, the allurements of peace and patriotism, to make again of the circle of equal States the old Federal sovereignty, should be held to be the least national; while those who have so far forgotten the common interest of all under the same government, who regard themselves as alien to the South, even as the South

regard themselves as alien to us, should be held as the most national? I do proclaim it, on the basis of a logic incontestable, that he among us who wishes most evil to any part of the country IS THE MORAL TRAITOR AND SOCIAL ANARCH.

We are powerful in proportion as we are national. If we should follow the advice of passion and treat the Southern States now in civil war as England treated Ireland, we become weak and denationalized. If we pursue the South with a licentious uncivic soldiery, gloating with anticipations of the plunder of private effects, or with the promises already held out of parceling out the lands of the South as the bounty which revenge pays for pillage, thus whetting a tigerish appetite for a great festival of blood and rapine, we may be sure that the special Nemesis which Herodotus traced through the early eras of history will haunt the men who instigate and the men who execute such a fell and imbecile policy. If, as in Rome once and in Spanish-America now, we bribe one part of the nation by the robbery of another portion, then we may be sure that conflicts will be renewed when exhaustion is overcome, and our flag, like that of old Spain, will typify a river of blood between margins of gold. If we would avoid the constant aggregation and disintegration of feeble masses in different provinces, such as the history of South America demonstrates, we must learn to carry out, better than the President has done, his own principle of friendly legislation, instead of repellant alienation. Powerful as are our armies—gradually encroaching amid many mistakes and vicissitudes upon the territory which is insurgent—great as are our Parrott guns, and invulnerable as are our ironclads, one thing we have to learn yet from history, that our best soldiers are not like Charlemagne's paladins, possessed of enchanted weapons. The weapon which wounds the cause of rebellion, and yet which can transmute the rebel into the patriot, is the enchantment of friendship. He who would destroy a part of his own country, as if it were alien, has no more love for it than Saturn had for the children of his own loins whom he destroyed. Such a creature is not a patriot, even if he were a man. Patriotism never desires to weaken or disgrace, but always to strengthen and glorify the country.

Confidence and allegiance have been begotten and renewed in other lands rent with civil feuds; why not in this? To answer this I shall consider, first, the mode by which such results can be attained, and, secondly, the illustrations from history showing such results.

1. States or societies are made up of individuals. To re-

form society or control masses individuals must be reached. M. Guizot, in his "History of Civilization" (page 25), has demonstrated that two elements are comprised in the great fact we call civilization—the progress of society and the progress of individuals. The one is but the external phenomenon of which the other is the cause. Society is merely the theater for the immortal man. Society is made for man, not man for society. Society dies, changes, rots, regrows, and decays again; man blooms in immortal youth beyond this limited destiny. When, therefore, you adopt a policy to restore States or rebuild the dismantled social order, you must begin by reaching the character of men, influencing their literature, their tastes, their maxims, their laws and institutions, their industries, their wealth and its distribution and means of attainment, their occupations, their divisions into classes, and all their relations to each other. Whenever you have harmonized these so as to give *contentment* you may be assured that no military compression or civil oppression can long keep the individuals interested from a common consent to the common government.

Habitual discipline and regard for government on the part of rulers and ruled, aided by religion and a common interest, is the power which keeps men from becoming anarchical.

Combined with this civil discipline is the feeling of allegiance. Without this feeling no State can be permanent. When the rulers fail to give that protection which is the consideration and correlative of allegiance, then allegiance fails, and society declines, despotism supervenes, or foreign conquest is imposed. Let statesmen remember that this is the capital defect of our rulers, and the proximate cause of our troubles. Thus remembering, let them study history with a view to the reinstatement of that protection to labor, liberty, property, and life which assures to the State the allegiance of the people. This feeling is sometimes called "loyalty." The French philosopher, M. Comte, has thus described its essence: *viz.:* that there be in the constitution of the state, whether a monarchy or democracy, *something* which is settled, something permanent, and not to be called in question."

The sacred something in *our* political system is the written Federal Constitution and the system of State governments, both having their basis on the sovereign will of the people of the States. Not less sacred, because not less above discussion, are the reserved rights of the States, and the still more important reservation of sovereignty in the people. This is the essential permanency of society in the United States. This was the

relation which all parties, whether at Charleston or Chicago, agreed should not be disturbed, which the President declared should not be disturbed by him, and the fear of whose disturbance has convulsed a nation of thirty millions. This mystic union of the Federal and State systems was the sacramental essence, the divine appointment, above the storms and eddies of discussion. In this were comprehended our ancient liberties and ordinances. Even the domestic institutions of the State were imbound with it. Indeed, it was the only fundamental law, pervading our society as gravitation pervaded the stellar spaces.

Those, whether North or South, who failed to keep this essence sacred and sealed are responsible for the consequences. Abolitionism, which lived by the disturbance of this system, was like secession, for both sprang from the same direful agitation and the same disturbance of the Constitution.

But is there no light through the clouds of war? Have we no *solution* for past wrongs, no immunity for future griefs? Are anger, hatred, scorn, revenge—the brood of wicked passions rankling in the heart—are these to remain? And shall there be no interregnum for the serene dynasty of peace and love, to walk white-handed through this bleeding and bloody land? Shall no one pour the lethean wave over the scenes of death and the sorrows of mourning? Shall there be no recantation of the oaths of fierce men, vowing revenge for homes wasted, property confiscated, brethren destroyed, and cities ruined? O God! Is there no hope that even time may not be allowed to assuage the hates and griefs of this bloody era? Shall the young men of to-day wear the rancor in their hearts till their hairs are whitened for the tomb and teach their children and children's children to perpetuate the hate of the fathers? If this is to be the fate of our Union, then God has mocked His creatures by fixing them in habitations bound together by the same skies, rivers, mountains, and lakes; mocked them by fixing in their hearts the principle of love, and cruelly flouted them by sending to this star a Prince of Peace as an Exemplar and Savior!

Who are the men, or the fiends, who talk of utter extermination? If it were possible it were execrable! To exterminate the Southern people rather than reach them, as Mr. Lincoln himself proposed, by friendly laws, is a crime more heinous than rebellion. Let the pitiless destruction of the Moors of Andalusia by Philip II, the merciless slaughter of the French in La Vendée, Claverhouse's bloody hunts after the Scottish Covenanters, the stained and cadaverous cheek of Ireland, the bloodshot eye of maddened Poland, the grim submission of re-

vengeful Venetia, teach us by their history that powder cannot cement nor bombs bear messages of love. Superadd to your force conciliation, and then your force may not be mere brute violence. Force has welded by its blows, but they were tempered in the fire of old and loving associations. "I do not fight the South because I hate her," said Mr. Crittenden; "I love her still." Conquest by force is only physical; subjugation implies mental acquiescence on the part of the vanquished in the ideas of the victor. Such a war, therefore, will produce only the *status quo ante bellum*,[1] leaving an absolute reciprocal negation; each party denying the claims of the other, and leaving no common ground for a truce to intellectual conflict.

The fact that war has come and that separation is impossible, makes more urgent the ascendency of a party whose first and only preference is for the Union through compromise, and who shall, at least, be allowed to try the experiment of reconciling the States by guaranties similar to those proposed in 1861. If it be found impossible to restore the old association of States by such negotiation, *then, and not till then, can statesmen begin properly to ponder the other problems connected with subjugation and recognition.* We may yet change the war from the diabolical purposes of those in power, by changing that power to other hands, and we are not ready to sever our Union while that hope remains. Of the two evils of subjugation or recognition I make my choice of—neither.

2. To restore allegiance and inspire nationality let the individual rebel in arms against us be reached by the arm of our soldier, and when a noncombatant by the moderation and paternal care of the Government. Let the military power of the Confederates be broken. Use those and only those severities of war which civilization warrants and which will make the military power of the South feel the power of the nation; but do not place any longer in their hands the armament of despair. They have had that weapon for over two years. Let our rulers forego their ostracism of the misguided citizen. Let an amnesty be tendered which has hope in its voice. Give forgiveness to the erring, hope to the desponding, protection to the halting, and allay even fancied apprehensions of evil by the measures of moderation. Thus, by confiscating confiscation, abolishing abolition, and canceling proclamations, by respecting private property and State rights, prepare that friendliness which will beget confidence in the individual citizen. Thus will minorities be transferred into majorities South, and the States discarding

[1] The situation before the war.

the rebel authorities betake themselves to their normal and proper sphere under the old order. If this cannot be done by the present rulers, let other rulers be selected.

History teaches in vain if it does not contain lessons of moderation in civil wars. How were the feuds of the Grecian federation accommodated? How were the civil wars of Rome ended? How were the intestine troubles of England assuaged? How was La Vendée pacified by the generous Hoche? How is it ever that unity of empire and consentaneity of thought are induced? How, except by the practice of that mildness which cares for and does not curse the people.

The closest analogy to our condition is to be found in the English civil war beginning in 1640. The English people are our ancestors. They had what we have—a similar code of personal freedom, great municipal independence, and a popular Parliament. The causes of the war were complicated by religious controversy; but the questions involved concerning the royal prerogative and the popular privilege are closely allied to our struggle. We know how the first Charles lost his head; how Cromwell's iron hand rescued, for a time, England from anarchy. At his death, eleven military governments, under major-generals like Monk, held almost absolute sway. Conspirators were punished with death. Confiscations were common. Party vengeance was rampant then as now, but the people's representatives considered that they had to decide between a new civil war and a restoration. Then came the famous declaration of Charles II from Breda. It removed all hesitation and the restoration began. The king in that paper declared that he desired to compose the distraction and confusion of his kingdom, to assume his ancient rights, and accord to them their ancient liberties, without further "blood-letting." He *conjured* them to a perfect union for the resettlement of all rights, under a free Parliament.

When this declaration was read in Parliament—though it was the false word of a designing tyrant—yet the restoration of the second Charles was voted by acclamation! Nor would the same sort of declaration from Abraham Lincoln be less powerful to restore the sovereign States to their old allegiance, especially if followed by a national convention and the restoration of a party not unfriendly to the entire union of all the States, with their "just rights." No distrust followed this declaration of the English king. He came to England. His journey to London was one perpetual fête—one continued shout of rejoicing! Faction ceased. History records that Cavaliers were

reconciled with Roundheads. Exiles showed no resentment in the joy of their return. A violent reaction against revolution began; war ceased; and the foundation was then laid for the permanent stability which 1688 gave to England.[1]

Let us have done with juggling amnesties and ambitious schemes, with philanthropic ferocity and enforced elections. Under no such policy, pitched in the key-note of the President's proclamation, or chanted in the mellifluous tones of the gentleman from Maryland [Mr. Davis], can the South ever be held in honorable alliance and harmony. A government inspired thus would be out of all relations to the States of this Union. It would have neither "the nerves of sensation which convey intelligence to the intellect of the body-politic, nor the ligaments and muscle which hold its parts together and move them in harmony." It would be as Russia is to Poland, as England to Ireland, the government of one people by another. It would never succeed with our race. It would never succeed with a territory whose configurations are so peculiar and whose interests are so varied as ours.

No citizenship is worth granting to those who dishonor themselves to receive it. No common bond of allegiance or nationality is possible on such terms. Mean and degrading conditions which unfit the citizen for manly equality are more despicable than rebellion. You cannot expel the poison of sedition by adding to its virulence. You cannot draw men from crime by stimulating the motive which led to it. But the principle of mercy is all-powerful and eternal. It is the very gospel of God; the very love which saves mankind. Inspired thus, what might be done if a wise and sagacious Executive should extend the same beneficent policy to the factions which are bleeding our beloved land!

Like the fugitive prophet upon Mount Horeb, we may approach and interrogate Deity itself in our despondency and for our deliverance. And, though, like him, we may hear the roar of the whirlwind of war, though we may tremble amid the earthquake of its wrath, and, though God may not be in the storm, or the earthquake, yet we may find Him in the still, small voice whose depth and sweetness are not those of tempestuous force or elemental strife, but soft as an angel's lute or a seraph's song, promising redress for wrong and deliverance from calamity. Horeb stands as a monumental lesson to our rulers forever, speaking the still, small voice of divine conciliation amid the thunders of the law. I wait for that voice to be spoken.

[1] The accession of William and Mary under constitutional guaranties.

My soul waiteth for it "more than they that watch for the morning; I say, more than they that watch for the *morning!*"

George S. Boutwell [Mass.] supported the measure, saying, however, that it did not go far enough.

There is one feature of the bill which does not receive my approval, and to which I assent only in deference to what I suppose is the present judgment of this House and of the country. I speak of the limitation of the elective franchise to white male citizens. The right of suffrage is not a natural right, but it is the highest thing among political rights. No community which denies the right of suffrage to any considerable number of its adult male inhabitants can ever be safe from intestine commotion, for wherever this right is so denied the people cannot be safe or even free from oppression. And, even if a community in which the right of suffrage is thus limited should be free from actual oppression, still the Government could not escape the suspicions and charges which result from an unjust distribution of political power. In free countries the rights of the people are frequently acquired and they are generally preserved by the ballot. When the ballot fails the resort is to the sword. When you deny the ballot to one-third or one-half of the people of the vast territory covered by the provisions of this bill, what do you leave for them or offer to them but a resort to the sword as the means of removing or redressing the grievances of which they are already the foredoomed victims?

I had indulged the hope, until recently, that this House would recognize the political rights of the colored race by securing the elective franchise to certain classes, or at least to a single class of those who hereafter should enjoy the protection of the Constitution. The vote upon the amendment of the Senate to the bill establishing the Territory of Montana dissipated at once and for the present this hope. The country will speedily revise our proceedings in this particular. Mark the progress of events! It is not yet two years since you were willing to contribute to the cause of the Union by the emancipation of the negro. I do not now speak of gentlemen on the other side of the House. I address myself to the friends of the Administration.

But now the President's proclamation of emancipation is accepted with signal unanimity by the people of the country. It has already received the considerate judgment of mankind; and may we not also reverently believe that it receives the con-

stant favor of Almighty God? I am aware that gentlemen on the other side of the House still utter their accustomed denunciations of the measure; but their words are like the wonderful missile of the South Sea Islander, which cuts the air fiercely and then falls harmlessly at the feet of him from whose hand the weapon sped.

The people accept the freedom of the negro; having recognized his right to freedom, they bid him do service for the country. When he has served the country in the field the justice of the nation will guarantee to him the power to maintain his rights in civil life.

Thus are events our masters; and thus does the country hesitate even in the presence of these events to do those acts of justice which are due to one race and necessary for the salvation of the other. When, and by what means, and for what period of time do you expect to set up and maintain loyal governments in the rebellious districts of the Union unless you confer the elective franchise upon the negro? The military power must at some moment not remote be withdrawn. The remnant of the dominant class will be powerful for a generation. There is a large number of poor whites, unaccustomed to independent thought or to independent action. The colored people are loyal, and in many States they are almost the only people who are trustworthy supporters of the Union. Will you reject them? I ask whether you will reject the civil and political power of the colored people in the State of South Carolina, for example? If I could direct the force of public sentiment and the policy of this Government, South Carolina, as a State and with a name, should never reappear in this Union. Georgia deserves a like fate. When the Constitution was formed she united herself with South Carolina and forced the recognition of the institution of slavery in our Constitution. Florida does not deserve a name in this Union. What then? Let these three States be set apart as the home of the negro. Invite him there by giving to him local political power. Give him the right of suffrage in those States, and the colored population, as rapidly as it can be spared from the industrial pursuits of the North, will aggregate upon the shores of the Atlantic and the Gulf of Mexico. Give them local self-government and let them defend themselves as a portion of this Republic.

I do not ask that in any one of the loyal States where a negro population exists, the right of suffrage shall be given to them, but in these three districts, South Carolina, Georgia, and Florida, I would provide for the right of suffrage to colored

persons. They have earned it by their services in the field, and there is a degree of injustice in asking a man to peril his life in the cause of the country and in defence of institutions in the creation and conduct of which he has no voice whatever.

I ask for this people justice, in the presence of this exigency when the life of the nation is in peril and when every reflecting person must see that the cause of that peril is in the injustice we have done to the negro race. They are four millions. They will remain on this continent. They cannot be expatriated. It is our duty to elevate them, to provide for their civilization, for their enlightenment, that they may enjoy the fruits of their labor and their capacity.

George H. Pendleton [Dem.], of Ohio, opposed the bill. He said that, carrying out its principle, the supremacy of Congress over State governments, to its logical conclusion would destroy the rights of the loyal States as well as those of the disloyal ones.

This doctrine is monstrous. It has no foundation in the Constitution. It subjects all the States to the will of Congress; it places their institutions at the feet of Congress. It creates in Congress an absolute unqualified despotism. It asserts the power of Congress in changing the State governments to be "plenary, supreme, unlimited"—"subject only to revision by the people of the whole United States." The rights of the people of the State are nothing, their will is nothing. Congress first decides, the people of the whole Union revise. My own State of Ohio is liable at any moment to be called in question for her constitution. She does not permit negroes to vote. If this doctrine be true Congress may decide this exclusion is anti-republican, and, by force of arms, abrogate that constitution and set up another permitting negroes to vote. From that decision of the Congress there is no appeal to the people of Ohio, but only to the people of Massachusetts, and New York, and Wisconsin, at the election of Representatives; and, if a majority cannot be elected to reverse the decision, the people of Ohio must submit. Woe be to the day when that doctrine shall be established, for from its centralized despotism we will appeal to the sword!

Sir, the rights of the States were the foundation corner of the Confederation. The Constitution recognized them, maintained them, provided for their perpetuation. Our fathers thought them the safeguard of our liberties. They have proved

so. They have reconciled liberty with empire; they have reconciled the freedom of the individual with the increase of our magnificent domain. They are the test, the touchstone, the security of our liberties. This bill, the avowed doctrine of its supporters, sweeps them all instantly away. It substitutes despotism for self-government; despotism the more severe because vested in a numerous Congress elected by a people who may not feel the exercise of its power. It subverts the Government, destroys the Confederation, and erects a tyranny on the ruins of republican governments. It creates unity—it destroys liberty—it maintains integrity of territory, but destroys the rights of the citizen.

Sir, if this be the alternative of secession, I should prefer that secession should succeed. I should prefer to have the Union dissolved, the Confederate States recognized; nay, more, I should prefer that secession should go on, if need be, until each State resumes its complete independence. I should prefer thirty-four republics to one despotism. From such republics, while I might fear discord and wars, I would enjoy individual liberty, and hope for reunion on the true principles of confederation. From one strong centralized despotism, overriding the rights of the people, overriding the rights of the States, I can see no escape except in apathetic contentment with slavery, or the oft-repeated, often-failing, always bloody struggles of despairing hope. I would rather live a free citizen of a republic no larger than my native county of Hamilton, than be the subject of a more splendid empire than a Cæsar in his proudest triumphs ever ruled, or a Napoleon in his loftiest flights ever conceived.

Sir, I cling to the hope that these evils may yet be averted. While I would prefer separation to the unity which this bill would create, I would fain hope that we may not be compelled to accept either alternative. If, before it is too late, the people will see the designs of those now in power, and will replace them with men who do not wish revolution, but do heartily wish a restoration of the Union, men—who will seek by peace the results which war has rendered well-nigh impossible—who will try to attain by conciliation the ends which never can be reached by subjugation—who will seek in consent the foundation of the right of the Government, in States rights the guaranties of the liberty of the citizen—in the Constitution the measure of the power of the Government and the extent of the surrender of perfect freedom imposed by the citizen upon himself—we may hope that we may again have union and liberty; that interest,

which alone binds together nations occupying a territory like our own, will assert its power and heal the wounds of war, and bring us again into the bonds of fraternal peace.

But, if they will not now see these designs and avert them, however long and bloody and desolating this war, it will end—I predict it now while the thunders of battle ring in our ears and the exultant shouts of victory rise upon the air—in recognition of the Confederacy, in final separation, and in a longer, bloodier, and more desolating war on the part of our people—of your constituents, sir, and mine—to throw off the despotism which will ere then have been firmly established over them.

The bill was passed on May 4 by a vote of 73 to 59.

It did not come up for discussion in the Senate until late in the session—July 1. After considerable discussion and some amendment it was passed on that date by a vote of 26 to 3.

The House disagreed with the Senate amendments, and on July 2 the Senate withdrew its amendments by a vote of 18 to 14.

The bill was presented to the President during the last hour of the last day of the session (July 4) and he refused to sign it, preferring that the plan be presented to the people for their consideration. Accordingly, on July 8, he issued the following proclamation:

Proclamation Concerning Reconstruction

By President Lincoln, July 8, 1864

Presenting the bill, and giving the reasons that had led him to submit it to the people, the President said:

Now, therefore, I, Abraham Lincoln, President of the United States, do proclaim, declare, and make known, that, while I am (as I was in December last, when by proclamation I propounded a plan for restoration) unprepared, by a formal approval of this bill, to be inflexibly committed to any single plan of restoration; and, while I am also unprepared to declare that the free-State constitutions and governments already adopted and installed in Arkansas and Louisiana shall be set aside and held for naught, thereby repelling and discouraging the loyal citizens who have set up the same as to further effort, or to declare a

constitutional competency in Congress to abolish slavery in States, but I am at the same time sincerely hoping and expecting that a constitutional amendment abolishing slavery throughout the nation may be adopted, nevertheless I am fully satisfied with the system for restoration contained in the bill as one very proper plan for the loyal people of any State choosing to adopt it, and that I am, and at all times shall be, prepared to give the executive aid and assistance to any such people, so soon as the military resistance to the United States shall have been suppressed in any such State, and the people thereof shall have sufficiently returned to their obedience to the Constitution and laws of the United States, in which cases military governors will be appointed, with directions to proceed according to the bill.

The radical Senators, Henry Winter Davis [Md.] and Benjamin Wade [O.], addressed "to the supporters of the Government" a "Protest" in which they said that they had read the President's proclamation "without surprise, but not without indignation." The implied condemnation of the supporters of the measure in his statement that its passage had been delayed till the very last moment was insincere. The reverse was the case; he had himself intrigued to secure this result, so as to obtain an excuse for refusing it. Indeed, one of the Senators closest to the President (James R. Doolittle, of Wisconsin) had written to the heads of the Louisiana government, which, as also the Arkansas government, had been formed according to the President's plan, and which would be reconstructed anew if the plan of Congress were adopted, that the House bill would be held as long as possible in the Senate and finally killed by a pocket veto of the President.

Senators Davis and Wade charged that the President's persistence in his own plan of reconstruction by executive authority was inspired by his desire to use, if necessary, the electoral votes of Louisiana and Arkansas to secure his reëlection. They also pointed to the abortive military expedition against Florida as evidence of the same purpose. They warned the country that trouble would certainly ensue if the votes of Louisiana and Arkansas turned the balance in his favor.

"Is it to be supposed that his competitors, defeated by these means, will acquiesce?"

In conclusion they warned the President that they and other members of the national legislature supported "a cause and not a man," that "the authority of Congress is paramount and must be respected, and, if he wished their support, he must confine himself to his *executive* duties: to obey and execute, not make the laws; to suppress armed rebellion by arms, and leave political reorganization to Congress."

In his annual message of December 6, 1864, the President announced that 12,000 citizens in each of the States of Arkansas and Louisiana had organized, in accordance with his proclamation, loyal State governments with free constitutions, and that there were movements in the same direction in Missouri, Kentucky, and Tennessee.

The last speech of the President was upon reconstruction. It was delivered on April 10, the day following the surrender of Lee at Appomattox.

"At Home Again in the Union"

Speech on Reconstruction by President Lincoln

The subject of reconstruction is fraught with great difficulty. Unlike a case of war between independent nations, there is no authorized organ for us to treat with—no one man has authority to give up the rebellion for any other man. We simply must begin with and mold from disorganized and discordant elements. Nor is it a small additional embarrassment that we, the loyal people, differ among ourselves as to the mode, manner, and measure of reconstruction. As a general rule, I abstain from reading the reports of attacks upon myself, wishing not to be provoked by that to which I cannot properly offer an answer. In spite of this precaution, however, it comes to my knowledge that I am much censured for some supposed agency in setting up and seeking to sustain the new State government of Louisiana.

In this I have done just so much as, and no more than, the public knows. In the annual message of December, 1863, and in the accompanying proclamation, I presented a plan of recon-

struction, as the phrase goes, which I promised, if adopted by any State, should be acceptable to and sustained by the executive Government of the nation. I distinctly stated that this was not the only plan which might possibly be acceptable, and I also distinctly protested that the Executive claimed no right to say when or whether members should be admitted to seats in Congress from such States. This plan was in advance submitted to the then Cabinet, and distinctly approved by every member of it. . . . The message went to Congress, and I received many commendations of the plan, written and verbal, and not a single objection to it from any professed emancipationist came to my knowledge until after the news reached Washington that the people of Louisiana had begun to move in accordance with it.

I have been shown a letter on this subject, supposed to be an able one, in which the writer expresses regret that my mind has not seemed to be definitely fixed upon the question whether the seceded States, so-called, are in the Union or out of it. It would, perhaps, add astonishment to his regret were he to learn that since I have found professed Union men endeavoring to answer that question, I have purposely forborne any public expression upon it. As appears to me, that question has not been nor yet is a practically material one, and any discussion of it, while it thus remains practically immaterial, could have no effect other than the mischievous one of dividing our friends. As yet, whatever it may become, that question is bad as the basis of a controversy, and good for nothing at all—a merely pernicious abstraction. We all agree that the seceded States, so-called, are out of their proper practical relation with the Union, and that the sole object of the Government, civil and military, in regard to these States, is to again get them into their proper practical relation. I believe that it is not only possible, but in fact easier, to do this without deciding or even considering whether those States have ever been out of the Union than with it. Finding themselves safely at home, it would be utterly immaterial whether they had been abroad. Let us all join in doing the acts necessary to restore the proper practical relations between these States and the Union, and each forever after innocently indulge his own opinion whether, in doing the acts, he brought the States from without into the Union, or only gave them proper assistance, they never having been out of it. The amount of constituency, so to speak, on which the Louisiana government rests, would be more satisfactory to all if it contained fifty thousand, or thirty thousand, or even twenty thou-

sand, instead of twelve thousand, as it does. It is also unsatisfactory to some that the elective franchise is not given to the colored man. I would myself prefer that it were now conferred on the very intelligent, and on those who serve our cause as soldiers. Still, the question is not whether the Louisiana government, as it stands, is quite all that is desirable. The question is: Will it be wiser to take it as it is and help to improve it, or to reject and disperse? Can Louisiana be brought into proper practical relation with the Union sooner by sustaining or by discarding her new State government? Some twelve thousand voters in the heretofore slave States of Louisiana have sworn allegiance to the Union, assumed to be the rightful political power of the State, held elections, organized a State government, adopted a free State constitution, giving the benefit of public school equally to black and white, and empowering the legislature to confer the elective franchise upon the colored man. This legislature has already voted to ratify the constitutional amendment recently passed by Congress, abolishing slavery throughout the nation. These twelve thousand persons are thus fully committed to the Union and to perpetuate freedom in the State—committed to the very things, and nearly all things, the nation wants—and they ask the nation's recognition and its assistance to make good this committal. Now, if we reject and spurn them, we do our utmost to disorganize and disperse them. We, in fact, say to the white man: You are worthless or worse; we will neither help you nor be helped by you. To the blacks we say: This cup of liberty which these, your old masters, held to your lips, we will dash from you, and leave you to the chances of gathering the spilled and scattered contents in some vague and undefined when, where, and how. If this course, discouraging and paralyzing both white and black, has any tendency to bring Louisiana into proper practical relations with the Union, I have so far been unable to perceive it. If, on the contrary, we recognize and sustain the new government of Louisiana, the converse of all this is made true. We encourage the hearts and nerve the arms of twelve thousand to adhere to their work, and argue for it, and proselyte for it, and fight for it, and feed it, and grow it, and ripen it to a complete success. The colored man, too, in seeing all united for him, is inspired with vigilance, and energy, and daring to the same end. Grant that he desires the elective franchise, will he not attain it sooner by saving the already advanced steps toward it than by running backward over them? Concede that the new government of Louisiana is only to what it should be as the egg is to

the fowl, we shall sooner have the fowl by hatching the egg than by smashing it. . . .

What has been said of Louisiana will apply generally to other States. And yet so great peculiarities pertain to each State, and such important and sudden changes occur in the same State, and withal so new and unprecedented is the whole case, that no exclusive and inflexible plan can safely be prescribed

THE NATION MOURNING AT LINCOLN'S BIER
By Tenniel in London "Punch"

as to details and collaterals. Such exclusive and inflexible plan would surely become a new entanglement. Important principles may and must be inflexible. In the present situation, as the phrase goes, it may be my duty to make some new announcement to the people of the South. I am considering, and shall not fail to act when satisfied that action will be proper.

On the outskirts of the crowd assembled to hear the address was one John Wilkes Booth, an actor, who had come to Washington the previous Saturday and was

stopping at the National Hotel. With him was a young man named David E. Herold.

It was when Lincoln made use of this expression: "It is also unsatisfactory to some that the election franchise is not given to the colored man. *I would myself prefer that it were now conferred on the very intelligent, and on those who serve our cause as soldiers,*" that, as Herold related, Booth nudged him and said in a tone of bitter resentment: "That means *nigger* equality; now, by God! I'll put him through."

CHAPTER IX

Reconstruction by Executive Authority

President Johnson's Severe View of Treason and Its Punishment—Sec. William H. Seward Converts the President from His Policy Toward Traitors—The President's Proclamation of Amnesty and Pardon—He Appoints Provisional Governors for the Seceded States—His Letter to Gov. William L. Sharkey [Miss.]—Constitutional Conventions of Southern States—Their Domination by ex-Secessionists—Acts of State Legislatures Nullify XIIIth Amendment—Report of Congressional Committee (William P. Fessenden, Chairman) on Acts of These Conventions and Legislatures—Opposition by the Country and Congress to Executive Reconstruction—Reports of Gen. Carl Schurz and Lieut.-Gen. Ulysses S. Grant on Political Conditions in the South—Address of Schuyler Colfax [Ind.] on His Election as Speaker of the House of Representatives—Privileges of the Floor Refused to Claimants of Seats in the House—Thaddeus Stevens [Pa.] Moves Appointment of Joint Committee to Investigate Political Conditions in the South—Senate Tables Credentials of Mississippi Claimants—Charles Sumner [Mass.] Introduces Resolutions Exacting Guaranties from States Applying for Restoration to the Union—First Annual Message of President Johnson: It Treats of Restoration of Rebel States to the Union and Protection for the Freedmen—John W. Farnsworth [Ill.] Introduces in the House Resolutions Opposed to the President's Reconstruction Policy—Appointment of Joint Committee (Senate and House) to Investigate Political Conditions in the South—Debate in the Senate: in Favor of Appointing the Committee: Jacob M. Howard [Mich.], William P. Fessenden [Me.]; Opposed, James R. Doolittle [Wis.], Willard Saulsbury [Del.], James Guthrie [Ky.]—Henry Wilson [Mass.] Introduces in the Senate Bill to Nullify Laws of Lately Rebellious States Discriminating against the Civil Rights of the Negro—Debate: in Favor of the Bill, Sen. Wilson, Charles Sumner [Mass.]; Opposed, Reverdy Johnson [Md.], Sen. Saulsbury, Edgar Cowan [Pa.].

UPON his accession as President (April 15, 1865) Andrew Johnson answered the general and natural inquiry as to what would be his policy by saying:

"I have to say that my policy must be left for development as the Administration progresses. The message of the declaration must be made by the acts as they transpire. The only assurance I can now give of the future is by reference to the past."

Three days later (April 18), while the body of Lincoln still lay in the White House, an Illinois delegation headed by Gov. Richard J. Oglesby paid the new President their respects.

James G. Blaine, in his "Twenty Years of Congress," has given an account of Johnson's speech in reply:

He spoke with profound emotion of the tragical termination of Mr. Lincoln's life: "The beloved of all hearts has been assassinated." Pausing thoughtfully, he added, "And when we trace this crime to its cause, when we remember the source whence the assassin drew his inspiration, and then look at the result, we stand yet more astounded at this most barbarous, most diabolical act. We can trace its cause through successive steps back to that source which is the spring of all our woes. No one can say that, if the perpetrator of this fiendish deed be arrested, he should not undergo the extremest penalty of the law known for crime: none will say that mercy should interpose. But is he alone guilty? Here, gentlemen, you perhaps expect me to present some indication of my future policy. One thing I will say: every era teaches its lesson. The times we live in are not without instruction. The American people must be taught—if they do not already feel—that treason is a crime and must be punished. The Government must be strong not only to protect but to punish. When we turn to the criminal code we find arson laid down as a crime with its appropriate penalty. We find theft and murder denounced as crimes, and their appropriate penalties prescribed; and there, too, we find the last and highest of crimes—treason. The people must understand that treason is the blackest of crimes and will surely be punished. Let it be engraven on every mind that treason is a crime, and traitors shall suffer its penalty. I do not harbor bitter or resentful feelings toward any. When the question of exercising mercy comes before me it will be considered calmly, judicially—remembering that I am the Executive of the nation. I know men love to have their names spoken of in con-

nection with acts of mercy, and how easy it is to yield to that impulse. But we must never forget that what may be mercy to the individual is cruelty to the state."

The President spoke in similar vein to other delegations. To a representative body of Southern loyalists who had been driven to the North he repeated his views with great earnestness and deep feeling:

CAPTURE OF JEFFERSON DAVIS

From the collection of the New York Historical Society

"It is hardly necessary for me on this occasion to declare that my sympathies and impulses in connection with this nefarious rebellion beat in unison with yours. Those who have passed through this bitter ordeal and who participated in it to a great extent are more competent, as I think, to judge and determine the true policy that should be pursued. I know how to appreciate the condition of being driven from one's home. I can sympathize with him whose all has been taken from him: I can sympathize with him who has been driven from the place that gave his children birth.

"*I have become satisfied that mercy without justice is a crime.* The time has come when the people should be taught to understand the length and breadth, the height and depth of the crime of treason. One who has become distinguished in the rebellion says that 'when traitors become numerous enough trea-

son becomes respectable, and to become a traitor is to constitute a portion of the aristocracy of the country.' God protect the American people against such an aristocracy! When the Government of the United States shall ascertain who are the conscious and intelligent traitors the penalty and the forfeit should be paid."

To a Pennsylvania delegation headed by ex-Secretary Simon Cameron he said:

"There has been an effort since this rebellion began to make the impression that it was a mere political struggle, or, as I see it thrown out in some of the papers, a struggle for the ascendency of certain principles from the dawn of the government to the present time, and now settled by the final triumph of the Federal arms. If this is admitted, the Government is at an end; for no question can arise but they will make it a party issue, and then to whatever length they carry it the party defeated will be only a party defeated, with no crime attaching thereto. But I say treason is a crime, the very highest crime known to the law, and there are men who ought to suffer the penalty of their treason! . . . To the unconscious, the deceived, the conscripted, in short, to the great mass of the misled, I would say mercy, clemency, reconciliation, and the restoration of their government. But to those who have deceived, to the conscious, intelligent, influential traitor who attempted to destroy the life of a nation, I would say, on you be inflicted the severest penalties of your crime."

The President inherited the Cabinet of his predecessor:

William H. Seward [N. Y.], Secretary of State.
Hugh McCulloch [Ind.], Secretary of the Treasury.
Edwin M. Stanton [O.], Secretary of War.
Gideon Welles [Conn.], Secretary of the Navy.
James Harlan [Ia.], Secretary of the Interior.
William Dennison [O.], Postmaster-General.
James Speed [Ky.], Attorney-General.

McCulloch, Welles, and Speed favored a conservative plan of reconstruction; Stanton, Harlan, and Dennison a radical plan.

Seward's position was in doubt. It was not until May 1 that he had recovered sufficiently from the murderous

assault upon him by Lewis Payne Powell to be informed of public affairs. By the 10th of the month he was well enough to confer with the President, and by the 20th he returned to his duties in his department.

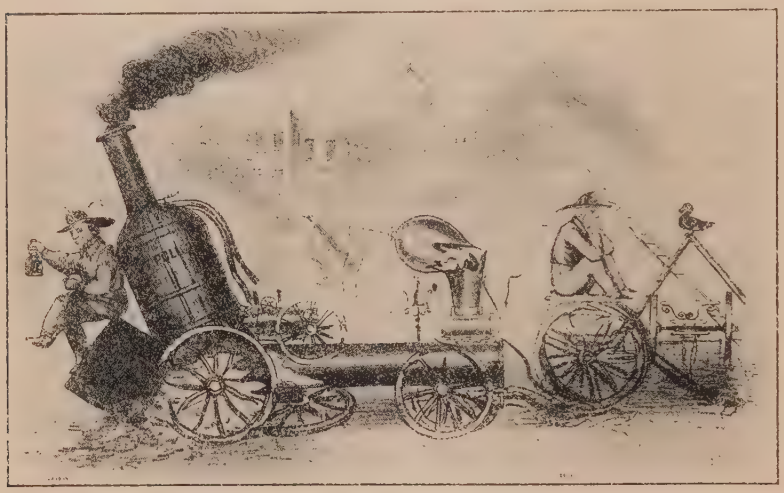
In his conference with the President, Seward, who, more than any living man with the possible exception of Charles Sumner, had cause to hate the South, inclined to mercy toward that section. Says Mr. Blaine: "He was firmly persuaded that the wisest plan of reconstruction was the one which would be speediest; that for the sake of impressing the world with the strength and the marvelous power of self-government, with its law, its order, its peace, we should at the earliest possible moment have every State restored to its normal relations with the Union. He did not believe that guaranty of any kind beyond an oath of renewed loyalty was needful. He was willing to place implicit faith in the coercive power of self-interest operating upon the men lately in rebellion. He agreed neither with the President's proclaimed policy of blood, nor with that held by the vast majority of his own political associates, which, avoiding the rigor of personal punishment, sought by exclusion from political honor and emolument to administer wholesome discipline to the men who had brought peril to the Government and suffering to the people. He believed, moreover, that the legislation which should affect the South, now that peace had returned, should be shared by representatives of that section, and that, as such participation must at last come if we were to have a restored republic, the wisest policy was to concede it at once, and not nurture by delay a new form of discontent and induce by withholding confidence a new phase of distrust and disobedience among the Southern people."

Secretary Seward's views made a strong impression on the President, indeed, so completely won him from his former views that he was ready to proclaim a policy of reconstruction without attempting the indictment of even one traitor or issuing a warrant for the arrest of a single participant in the Rebellion aside from those

suspected of personal crime in connection with the noted conspiracy of assassination.

Leading men of the South, seeing this change of temper in the President, helped to fix it. Dropping their former contemptuous attitude toward him and cultivating his friendship they applauded his consistent adherence to the Democratic theory that the rights of a State were inherent and inalienable.

On May 29 two decisive steps were taken in the work of reconstruction. Both steps proceeded on the theory that every act needful for the rehabilitation of the seceded States could be accomplished by the Executive



"MY POLICY" [SEWARD'S] IN 1868—AND THE "DEAD DUCK" STILL LIVES

From the collection of the New York Historical Society

Department of the Government. This was known to be the favorite doctrine of Mr. Seward, and the President readily acquiesced in its correctness. Mr. Seward had no difficulty in persuading him that he possessed, as President, every power needful to accomplish the complete reconstruction of the rebellious States.

The first of these important acts was a proclamation of amnesty and pardon to "all persons who have directly or indirectly participated in the existing Rebellion" upon the condition that such persons should take

an oath declaring that henceforth they would "faithfully support, protect, and defend the Constitution of the United States and the union of the States thereunder," and that they would also "abide by and faithfully support all laws and proclamations which have been made during the existing Rebellion, with reference to the emancipation of slaves."

Certain classes were exempted from the benefits of amnesty: (1) Confederate diplomatists and foreign agents; (2) those who had left offices in the Federal judiciary to engage in the Rebellion; (3) officers in the Confederate army above the rank of colonel; (4) those who had left seats in Congress to join the Rebellion; (5) those who had resigned from the Federal army to join the Rebellion; (6) those who had maltreated prisoners in contravention of the laws of war (this was aimed at those who had abused negro prisoners); (7) absentees from the United States for the purpose of aiding the Rebellion (this was aimed at certain persons going over the Canadian border and concocting schemes for burning Northern cities, introducing infectious diseases in the loyal States, etc.); (8) Rebel officers who were West Point graduates; (9) Confederate State governors; (10) citizens of loyal States who had left these to aid the Rebellion; (11) those who had been engaged in destroying commerce on the high seas and Great Lakes; (12) prisoners of war still in custody for offences against the Government; (13) rebels owning taxable property over $20,000 in value (discrimination between rich and poor rebels was insisted on by the President and prevailed against the opposition of Seward, who assented to it only on the prospect that few men were left in the Confederacy who possessed the wealth mentioned).

This proclamation was much like that issued by President Lincoln on December 8, 1863, with the saving exception of a proviso which invited individuals of the excluded classes to apply for clemency to the President and virtually assured them of pardon except in cases of aggravated guilt.

Within nine months after the proclamation about 14,000 pardons were sought for and granted.

The second act looking toward the restoration of the South to its national rights was an executive proclamation appointing William W. Holden provisional governor of North Carolina and authorizing him to call a State convention "to present such a republican form of State government as will entitle the State to the guaranty of the United States therefor and its people against invasion, insurrections, and domestic violence."

It was specially provided in the proclamation that in "choosing delegates to any State convention no person shall be qualified as an elector or eligible as a member unless he shall have previously taken the prescribed oath of allegiance, and unless he shall also possess the qualifications of a voter as defined under the constitution and laws of North Carolina as they existed on the 20th of May, 1861, immediately prior to the so-called ordinance of secession." Says Mr. Blaine: "Mr. Lincoln had in mind, as was shown by his letter to Governor Hahn of Louisiana, to try the experiment of negro suffrage, beginning with those who had served in the Union army and who could read and write; but President Johnson's plan confined the suffrage to white men, by prescribing the same qualifications as were required in North Carolina before the war."

The President directed all the departments of the Federal Government to reëstablish their functions in the State, and this was done.

On June 13 Mississippi was treated in the same manner as North Carolina, William L. Sharkey being appointed Provisional Governor. On June 17 this treatment was accorded to Georgia (James Johnson, Provisional Governor), and to Texas (Andrew J. Hamilton, Provisional Governor); on June 21, Alabama (Lewis E. Parsons); on June 30, South Carolina (Benjamin F. Perry), and on July 13, Florida (William Marvin), completing the list of States in which loyal governments had not been formed during Lincoln's administration.

This plan rendered it possible, and indeed certain,

that State officers would be chosen for the permanent organization of the States who had not taken oath of allegiance to the Federal Government. Accordingly it met at once with great opposition among the people and their representatives in Congress. These said that it would hand over all the State governments to the very traitors who had instigated the Rebellion, and that the negroes, being deprived of the elective franchise, would not be able to maintain their freedom. The latter sentiment wrought on the President so powerfully that, against his own wish, he was compelled to address a circular to his provisional governors, suggesting that the elective franchise should be extended to all persons of color "who can read the Constitution of the United States and write their names, and also to those who own real estate valued at not less than two hundred and fifty dollars and pay taxes thereon."

In writing to Governor Sharkey of Mississippi in relation to this subject the President argued that his recommendations touching colored suffrage could be adopted "with perfect safety," and that thereby "the Southern States would be placed, with reference to free persons of color, upon the same basis with the free States." That Mr. Johnson, says Mr. Blaine, made this recommendation simply from policy and not from any proper conception of its inherent justice is indicated by the closing paragraph in his letter to Governor Sharkey. Indeed, by imprudent language the President made an unnecessary exposure of the character of his motives, and deprived himself of much of the credit which might otherwise have belonged to him. "I hope and trust," he wrote to his Mississippi governor, "that your convention will do this, and as a consequence the Radicals, who are wild upon negro franchise, will be completely foiled in their attempt to keep the Southern States from renewing their relations to the Union by not accepting their Senators and Representatives."

The whole scheme of reconstruction, as originated by Mr. Seward and adopted by the President, was in operation by the middle of July. The rapid and thor-

ough change in the President's position was clearly discerned by the people. His course of procedure was dividing the Republican party and already encouraging the hopes of those in the North who had been the steady opponents of Mr. Lincoln's war policy, and of those in the South who had sought for four years to destroy the republic. It soon became evident that the Northern Democrats who had been opposed to the war, and the Southern Democrats who had been defeated in the war, would unite in political action. Public interest was therefore transferred for the time from the acts of the President at the national capital to the acts of the reconstruction conventions about to assemble in the South.

Reconstruction Conventions in the South

Every convention called in the South to reconstruct the State governments assumed that the old State consitutions were in full force, and proceeded to amend these only so far as, in their opinion, it was necessary to secure their recognition by the Federal Government. In not one instance did they submit for ratification these constitutions to the people of the States which were affected, but, assuming their adoption, at once ordered the election of Representatives in Congress. These elections were dominated by former secessionists, with the result that men of this class, with few exceptions, were chosen to enter the halls of the national legislature. Upon this action a joint committee of Congress (William P. Fessenden, of Maine, chairman) subsequently commented as follows:

"Hardly is the war closed before the people of the insurrectionary States come forward and haughtily claim, as a right, the privilege of participating at once in that Government which they have for four years been fighting to overthrow. Allowed and encouraged by the Executive to organize State governments, they at once placed in power leading rebels, unrepentant and unpardoned, excluding with contempt those who had manifested an attachment to the Union, and preferring in many

instances those who had rendered themselves peculiarly obnoxious. In the face of the law requiring an oath that would necessarily exclude all such men from Federal offices, they have elected, with very few exceptions, as Senators and Representatives in Congress, the very men who have actively participated in the rebellion, insultingly denouncing the law as unconstitutional."

The oath referred to in the committee's report is that popularly known as the "Ironclad oath," prescribed by the Act of July 2, 1862, to be taken by every person elected or appointed to any office of honor or profit under the Government of the United States, the President alone excepted. The officer before entering upon his duties was compelled to swear that he had "never voluntarily borne arms against the United States"; that he had "voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility to the National Government"; that he had "neither sought nor accepted nor attempted to exercise the functions of any office whatever under authority or pretended authority in hostility to the United States"; that he had "never yielded a voluntary support to any pretended government within the United States, hostile or inimical thereto."

Nevertheless former secessionists, such as Alexander H. Stephens, sought election to the Senate and House, boasting that they would prove the unconstitutionality of the Ironclad oath and demand their seats.

Mr. Stephens secured an election to the Senate and was present in Washington at the ensuing session of Congress, asking admission to a seat, says Mr. Blaine, as coolly as if every living man had forgotten that for four years he had been exerting his utmost effort to destroy the Constitution under which he now claimed the full rights of a citizen. Mr. Stephens even went so far as to point out to the loyal men in Congress how they were depriving him of his rights by demanding an oath of loyalty and good faith as the condition on which he should be entitled to take part in legislating for the restored Union.

Accordingly the same committee declared further that:

"Professing no repentance, glorying apparently in the crime they had committed, avowing still, as the uncontradicted testimony of Mr. Stephens and many others proves, an adherence to the pernicious doctrine of secession, and declaring that they yielded only to necessity, these men insist with unanimous voice upon their rights as States, and proclaim that they will submit to no conditions whatever as preliminary to their resumption of power under that Constitution *which they still claim the right to repudiate.*"

The report of the Congressional Committee further stated that:

"The Southern press, with few exceptions, abounds with weekly and daily abuse of the institutions and people of the loyal States; defends the men who led, and the principles which incited, the rebellion; denounces and reviles Southern men who adhered to the Union; and strives constantly and unscrupulously, by every means in its power, to keep alive the fire and hate and discord between the sections; calling upon the President to violate his oath of office, overturn the Government by force of arms, and drive the representatives of the people from their seats in Congress. The national banner is openly insulted and the national airs scoffed at, not only by an ignorant populace, but at public meetings. In one State [Virginia] the leading general of the rebel armies [Robert E. Lee] is openly nominated for governor by the House of Delegates, and the nomination is hailed by the people with shouts of satisfaction and openly indorsed by the press."

The committee averred that:

"Witnesses of the highest character testify that, without the protection of United States troops, Union men, whether of Northern or Southern origin, would be obliged to abandon their homes. The feeling in many portions of the country toward the emancipated slaves, especially among the ignorant and uneducated, is one of vindictive and malicious hatred. The deep-seated prejudice against color is assiduously cultivated by the public journals and leads to acts of cruelty, oppression, and murder, which the local authorities are at no pains to prevent or punish."

It was further declared by the committee:

"That the evidence of an intense hostility to the Federal Union, and an equally intense love for the late Confederacy, nurtured by the war, is decisive. While it appears that nearly all are willing to submit, at least for the time being, to the Federal authority, it is equally clear that the ruling motive is a desire to obtain the advantages which will be derived from a representation in Congress."

It was also proved before the committee, on the admissions of witnesses who had been prominent in the Rebellion, that "the generally prevailing opinion in the late Confederacy defends the legal right of secession and upholds the doctrine that the first allegiance of the people is due to the States and not to the United States." It was further admitted by the same class of witnesses that "the taxes levied by the United States will be paid only on compulsion and with great reluctance," and that "the people of the rebellious States would, if they could see a prospect of success, repudiate the national debt." It was stated by witnesses from the South, with evident pride, that "officers of the Union army, on duty in the South, and Northern men who go there to engage in business, are generally detested and proscribed," and that "Southern men who adhered to the Union are bitterly hated and relentlessly persecuted."

When the Southern legislatures assembled they passed laws practically nullifying the Thirteenth Amendment. Says Mr. Blaine: Both in the civil and criminal code the treatment of the negro was different from that to which the white man was subjected. He was compelled to work under a series of labor laws applicable only to his own race. The laws of vagrancy were so changed as, in many of their provisions, to apply only to him, and under their operation all freedom of movement and transit was denied. The liberty to sell his time at a fair market rate was destroyed by the interposition of apprentice laws. Avenues of usefulness and skill in which he might specially excel were closed against him lest he should compete with white men.

The attitude of the South caused a great advance in radical sentiment at the North. Men who had hitherto been unwilling to accord the elective franchise to the negro even in their own States began to believe that the grant of this throughout the Union was the only safeguard that could be given to save him from being practically remanded to slavery. This opinion of the people was reflected in the views of their national representatives, and observers of the signs of the times prophesied that the President's plan of reconstruction, under which the Southern States had perpetrated their acts, would be overturned at the coming session of Congress.

Investigations of Southern Conditions

During the summer of 1865 the President commissioned General Carl Schurz to travel through the South investigating political conditions in order to see if there was warrant to reëstablish governments of the States lately in rebellion. General Schurz started on his mission early in July and was engaged upon it until the middle of autumn, traveling through South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Texas. His conclusions as summarized by Mr. Blaine were as follows:

The loyalty of the masses and of most of the leaders of the South "consists in submission to necessity." Except in individual instances there is "an entire absence of that national spirit which forms the basis of true loyalty and patriotism.

"The emancipation of the slaves is submitted to only in so far as chattel slavery in the old form could not be kept up; and, although the freedman is no longer considered the property of the individual master, he is considered the slave of society, and all independent State legislation will share the tendency to make him such. The ordinances abolishing slavery, passed by the conventions under the pressure of circumstances, will not be looked upon as barring the establishment of a new form of servitude. Practical attempts," Mr.

Schurz continued, "on the part of the Southern people to deprive the negro of his rights as a freedman may result in bloody collision, and will certainly plunge Southern society into resistless fluctuations and anarchical confusion."

These evils, in the opinion of Mr. Schurz, "can be prevented only by continuing the control of the National Government in the States lately in rebellion until free labor is fully developed and firmly established. This desirable result will be hastened by a firm declaration on the part of the Government that national control in the South will not cease until such results are secured." It was Mr. Schurz's judgment that "it will hardly be possible to secure the freedman against oppressive legislation and private persecution unless he be endowed with a certain measure of political power." He felt sure of the fact that, the "extension of the franchise to the colored people upon the development of free labor and upon the security of human rights in the South being the principal object in view, the objections raised upon the ground of the ignorance of the freedmen become unimportant."

Mr. Schurz made an intelligent argument in favor of negro suffrage. He was persuaded that the Southern people would never grant suffrage to the negro voluntarily, and that "the only manner in which the Southern people can be induced to grant to the freedmen some measure of self-protecting power, in the form of suffrage, is to make it a condition precedent to readmission." He remarked upon the extraordinary delusion then pervading a portion of the public mind regarding the deportation of the freedmen. "The South," he said, stands in need of an increase and not a diminution of its laboring force to repair the losses and disasters of the last four years. Much is said of importing European laborers and Northern men. This is the favorite idea among planters who want such emigrants to work on their plantations, but they forget that European and Northern men will not come to the South to serve as hired hands on the plantations, but to acquire property

for themselves; and even if the whole European emigration, at the rate of two hundred thousand a year, were turned into the South, leaving not a single man for the North and West, it would require between fifteen and twenty years to fill the vacuum caused by the deportation of freedmen."

Mr. Schurz desired not to be understood as saying that "there are no well-meaning men among those who are compromised in the Rebellion. There are many, but neither their number nor their influence is strong enough to control the manifest tendency of the popular spirit." Apprehending that his report might be antagonized by evidence of a contrary spirit shown in the South by the action of their conventions, Mr. Schurz declared that it was "dangerous to be led by such evidence into any delusions. As to the motives," said Mr. Schurz, "upon which the Southern people acted when abolishing slavery (in their conventions) and their understanding of the bearings of such acts, we may safely accept the standard they have set up for themselves." The only argument of justification was that "they found themselves in a situation where *they could do no better.*" A prominent Mississippian (General W. L. Brandon) said in a public card, according to Mr. Schurz, "My honest conviction is that we must accept the situation until we can once more get control of our own State affairs . . . I must submit for the time to evils I cannot remedy." Mr. Schurz expressed his conviction that General Brandon had "only put in print what a majority of the people say in more emphatic language."

By the time General Schurz's report reached him (in November, 1865) the President had gone too far in his reconstruction policy to recede from it. Accordingly he secured a report upon the same points from Lieut.-Gen. Ulysses S. Grant, who had just completed a very brief tour of military inspection through a number of the States covered by General Schurz. General Grant's report was brief but positive; he declared his belief that "the mass of thinking men of the South accept the present situation of affairs in good faith." At the same

time he thought that four years of war had left the Southern people in a condition hardly to yield proper obedience to civil authority, and he therefore recommended that small garrisons should be maintained throughout the region "until such time as labor returns to its proper channels and civil authority is fully established."

He advised, however, that no negroes be stationed in the garrisons, as their presence would demoralize labor and cause their camps to be a resort of the freedmen.

The white people, he said, were "anxious to return to self-government within the Union as soon as possible," and were willing and anxious to receive protection from the Government during the process of reconstruction. All they desired was not to be humiliated.

"The questions," continued General Grant, "heretofore dividing the people of the two sections—slavery and the right of secession—the Southern men regard as having been settled forever by the tribunal of arms," and some of the leading men regarded it as having been fortunately settled for the whole country.

He advised that the Freedmen's Bureau be placed under the officers of the various Southern military departments, for economy's sake and to secure uniform and responsible action. His general comment on the bureau was adverse—it tended to impress the freedman with the idea that he would not be compelled to work and that the lands of the former masters would be divided among their former slaves.

In the succeeding debates on reconstruction these reports were drawn from the President by Congress; that of General Schurz was quoted largely by the Opposition, and that of General Grant by the Administration, in support of the opposing contentions.

The new Congress (the Thirty-ninth) assembled on December 4, 1865. Each chamber was Republican by a large majority. Schuyler Colfax [Ind.] was elected Speaker of the House of Representatives. In accepting the office he said:

Safeguarding Civil Rights

Speaker Colfax

The duties of Congress are as obvious as the sun's pathway in the heavens. Representing, in its two branches, the States and the people, its first and highest obligation is to guarantee to every State a republican form of government. The rebellion having overthrown constitutional State governments in many States, it is yours to mature and enact legislation which, with the concurrence of the Executive, shall establish them anew on such a basis of enduring justice as will guarantee all necessary safeguards to the people, and afford, what our Magna Charta, the Declaration of Independence, proclaims is the chief object of government—protection to all men in their inalienable rights. [Applause.] The world should witness, in this great work, the most inflexible fidelity, the most earnest devotion, to the principles of liberty and humanity, the truest patriotism, and the wisest statesmanship.

Heroic men, by hundreds of thousands, have died that the Republic might live. The emblems of mourning have darkened White House and cabin alike. But the fires of civil war have melted every fetter in the land, and proved the funeral pyre of slavery. [Applause.] It is for you, Representatives, to do your work as faithfully and as well as did the fearless saviors of the Union on their more dangerous arena of duty. Then we may hope to see the vacant and once abandoned seats around us gradually filling up, until this hall shall contain Representatives from every State and district; their hearts devoted to the Union for which they are to legislate, jealous of its honor, proud of its glory, watchful of its rights, and hostile to its enemies. And the stars on our banner, that paled when the States they represented arrayed themselves in arms against the nation, will shine with a more brilliant light of loyalty than ever before.

No Senators nor Representatives were seated at this time from the formerly rebellious States, though there were several claimants present. The feeling of the House of Representatives in this matter was clearly shown by its refusal to vote on a resolution of William E. Niblack [Ind.] according the claimants the customary privileges of the floor.

Thaddeus Stevens [Pa.] moved that a joint com-

mittee of fifteen be appointed, nine members from the House and six from the Senate, to investigate the condition of the States formerly in secession and report upon whether or not they were entitled to representation in Congress. The resolution was received by the House, but when presented next day in the Senate it was ordered to lie over one day. Credentials were received in the Senate from William L. Sharkey and James L. Alcorn, elected by the legislature of Mississippi, and were laid on the table.

On the same day Charles Sumner [Mass.] introduced in the Senate resolutions significant of the gathering opposition to the President's reconstruction policy. These defined the duty of Congress in respect to guaranties of the national security and national faith in the rebel States. They declared that, in order to provide proper guaranties for security in the future, "Congress should take care that no one of the rebellious States should be allowed to resume its relations to the Union until after the satisfactory performance of five several conditions, which must be submitted to a popular vote and be sanctioned by a majority of the people in each of those States respectively."

Mr. Sumner demanded first "the complete reëstablishment of loyalty, as shown by an honest recognition of the unity of the republic and the duty of allegiance to it at all times without mental reservation or equivocation of any kind. How Mr. Sumner, says Mr. Blaine in his "Twenty Years of Congress," could determine that "the recognition of the unity of the republic" was *honest,* how he could know whether there was not, after all, a mental reservation on the part of the rebels now swearing allegiance, he did not attempt to inform the Senate. The second condition demanded "the complete suppression of all oligarchical pretensions and the complete enfranchisement of all citizens, so that there shall be no denial of rights on account of race or color." The third condition was "the rejection of the rebel debt and the adoption in just proportions of the national debt and the national obligations to Union soldiers, with sol-

emn pledges never to join in any measure, directly or indirectly, for their repudiation or in any way tending to impair the national credit." The fourth condition was "the organization of an educational system for the equal benefit of all, without distinction of color or race." The fifth had some of the objectionable features of his first, demanding "the choice of citizens for office, whether State or national, of constant and undoubted loyalty, whose conduct and conversation shall give assurance of peace and reconciliation." The rebel States were not to be, in Mr. Sumner's language, "precipitated back to political power and independence, but must wait until these conditions are, in all respects, fulfilled." In addition he desired a declaration of the Senate that "the Thirteenth Amendment, abolishing slavery, has become and is a part of the Constitution of the United States, having received the approval of the legislatures of three-fourths of the States adhering to the Union." He declared that "the votes of the States in rebellion are not necessary in any way to its adoption, but they must all agree to it through their legislatures as a condition precedent to their restoration to their full rights as members of the Union." With these resolutions Mr. Sumner submitted another long series declaratory of the duty of Congress in respect to loyal citizens in the rebel States. His first series had defined what the lately rebellious States must agree to by popular vote, and now he outlined quite fully what would be the duty of Congress respecting the admission of those States to representation in the Senate and the House. The central fact of the whole series was that the color of the skin must not exclude a loyal man from civil rights.

On the next day (December 5) the two chambers met to hear the first annual message of the President.

Admit the States with Conditional Guaranties

First Annual Message of President Johnson

After deploring the assassination "by an act of parricidal treason" of his predecessor, whom he extolled

as the savior of the Union and a statesman to whose memory the whole world was rendering justice, he said that the sad event had cast upon himself a "heavier weight of cares than had ever devolved upon any one of his (Lincoln's) predecessors," and that he therefore asked "the support and confidence" of Congress and the people.

The Union of the United States of America was intended by its authors to last as long as the States themselves shall last. "*The Union shall be perpetual,*" are the words of the Confederation. "*To form a more perfect Union,*" by an ordinance of the people of the United States, is the declared purpose of the Constitution.

The Constitution contains within itself ample resources for its own preservation. It has power to enforce the laws, punish treason, and insure domestic tranquillity. In case of the usurpation of the government of a State by one man, or an oligarchy, it becomes a duty of the United States to make good the guaranty to that State of a republican form of government, and so to maintain the homogeneousness of all. Does the lapse of time reveal defects? A simple mode of amendment is provided in the Constitution itself, so that its conditions can always be made to conform to the requirements of advancing civilization. No room is allowed even for the thought of a possibility of its coming to an end. The Constitution is the work of "the people of the United States," and it should be as indestructible as the people.

It is not strange that the framers of the Constitution, which had no model in the past, should not have fully comprehended the excellence of their own work. Fresh from a struggle against arbitrary power, many patriots suffered from harassing fears of an absorption of the State governments by the general Government, and many from a dread that the States would break away from their orbits. But the very greatness of our country should allay the apprehension of encroachments by the general Government. The subjects that come unquestionably within its jurisdiction are so numerous that it must ever naturally refuse to be embarrassed by questions that lie beyond it. Were it otherwise, the Executive would sink beneath the burden; the channels of justice would be choked; legislation would be obstructed by excess; so that there is a greater temptation to exercise some of the functions of the general Government through the States than to trespass on their rightful sphere. "The ab-

solute acquiescence in the decisions of the majority" was, at the beginning of the century, enforced by Jefferson "as the vital principle of republics," and the events of the last four years have established, we will hope forever, that there lies no appeal to force.

The maintenance of the Union brings with it "the support of the State governments in all their rights"; but it is not one of the rights of any State government to renounce its own place in the Union, or to nullify the laws of the Union. The largest liberty is to be maintained in the discussion of the acts of the Federal Government; but there is no appeal from its laws, except to the various branches of that Government itself, or to the people, who grant to the members of the legislative and of the executive departments no tenure but a limited one, and in that manner always retain the powers of redress.

"The sovereignty of the States" is the language of the Confederacy, and not the language of the Constitution. The latter contains the emphatic words, "The Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

Certainly the Government of the United States is a limited government; and so is every State government a limited government. With us, this idea of limitation spreads through every form of administration, general, State, and municipal, and rests on the great distinguishing principle of the recognition of the rights of man. The ancient republics absorbed the individual in the state, prescribed his religion, and controlled his activity. The American system rests on the assertion of the equal right of every man to life, liberty, and the pursuit of happiness; to freedom of conscience, to the culture and exercise of all his faculties. As a consequence, the State government is limited, as to the general Government in the interests of union, as to the individual citizen in the interest of freedom.

States, with proper limitations of power, are essential to the existence of the Constitution of the United States. At the very commencement, when we assumed a place among the powers of the earth, the Declaration of Independence was adopted by States; so also were the Articles of Confederation; and when "the people of the United States" ordained and established the Constitution, it was the assent of the States, one by one, which

gave it vitality. In the event, too, of any amendment to the Constitution, the proposition of Congress needs the confirmation of States. Without States, one great branch of the legislative government would be wanting. And, if we look beyond the letter of the Constitution to the character of our country, its capacity for comprehending within its jurisdiction a vast continental empire is due to the system of States. The best security for the perpetual existence of the States is the "supreme authority" of the Constitution of the United States. The perpetuity of the Constitution brings with it the perpetuity of the States; their mutual relation makes us what we are, and in our political system their connection is indissoluble. The whole cannot exist without the parts, nor the parts without the whole. So long as the Constitution of the United States endures the States will endure; the destruction of the one is the destruction of the other; the preservation of the one is the preservation of the other.

I have thus explained my views of the mutual relations of the Constitution and the States, because they unfold the principles on which I have sought to solve the momentous questions and overcome the appalling difficulties that met me at the very commencement of my administration. It has been my steadfast object to escape from the sway of momentary passions, and to derive a healing policy from the fundamental and unchanging principles of the Constitution.

I found the States suffering from the effects of a civil war. Resistance to the general Government appeared to have exhausted itself. The United States had recovered possession of their forts and arsenals; and their armies were in the occupation of every State which had attempted to secede. Whether the territory within the limits of those States should be held as conquered territory, under military authority emanating from the President as the head of the army, was the first question that presented itself for decision.

Now, military governments, established for an indefinite period, would have offered no security for the early suppression of discontent; would have divided the people into the vanquishers and the vanquished; and would have envenomed hatred, rather than have restored affection. Once established, no precise limit to their continuance was conceivable. They would have occasioned an incalculable and exhausting expense. Peaceful emigration to and from that portion of the country is one of the best means that can be thought of for the restoration of harmony; and that emigration would have been prevented; for what

emigrant from abroad, what industrious citizen at home, would place himself willingly under military rule? The chief persons who would have followed in the train of the army would have been dependents on the general Government, or men who expected profit from the miseries of their erring fellow citizens. The powers of patronage and rule which would have been exercised, under the President, over a vast and populous and naturally wealthy region are greater than, unless under extreme necessity, I should be willing to intrust to any one man; they are such as, for myself, I could never, unless on occasions of great emergency, consent to exercise. The willful use of such powers, if continued through a period of years, would have endangered the purity of the general administration and the liberties of the States which remained loyal.

Besides, the policy of military rule over a conquered territory would have implied that the States whose inhabitants may have taken part in the rebellion had, by the act of those inhabitants, ceased to exist. But the true theory is that all pretended acts of secession were, from the beginning, null and void. The States cannot commit treason, nor screen the individual citizens who may have committed treason, any more than they can make valid treaties or engage in lawful commerce with any foreign power. The States attempting to secede placed themselves in a condition where their vitality was impaired, but not extinguished—their functions suspended, but not destroyed.

But if any State neglects or refuses to perform its offices there is the more need that the general Government should maintain all its authority, and, as soon as practicable, resume the exercise of all its functions. On this principle I have acted, and have gradually and quietly, and by almost imperceptible steps, sought to restore the rightful energy of the general Government and of the States. To that end, provisional governors have been appointed for the States, conventions called, governors elected, legislatures assembled, and Senators and Representatives chosen to the Congress of the United States. At the same time the courts of the United States, as far as could be done, have been reopened, so that the laws of the United States may be enforced through their agency. The blockade has been removed and the custom houses reëstablished in ports of entry, so that the revenue of the United States may be collected. The Post-Office Department renews its ceaseless activity, and the general Government is thereby enabled to communicate promptly with its officers and agents. The courts bring security to persons and property; the opening of the ports invites the restora-

tion of industry and commerce; the post-office renews the facilities of social intercourse and of business. And is it not happy for us all that the restoration of each one of these functions of the general Government brings with it a blessing to the States over which they are extended? Is it not a sure promise of harmony and renewed attachment to the Union that, after all that has happened, the return of the general Government is known only as a beneficence?

I know very well that this policy is attended with some risk; that for its success it requires at least the acquiescence of the States which it concerns; that it implies an invitation to those States, by renewing their allegiance to the United States, to resume their functions as States of the Union. But it is a risk that must be taken; in the choice of difficulties, it is the smallest risk; and to diminish, and, if possible, to remove, all danger I have felt it incumbent on me to assert one other power of the general Government—the power of pardon. As no State can throw a defence over the crime of treason, the power of pardon is exclusively vested in the executive Government of the United States. In exercising that power I have taken every precaution to connect it with the clearest recognition of the binding force of the laws of the United States, and an unqualified acknowledgment of the great social change of condition in regard to slavery which has grown out of the war.

The next step which I have taken to restore the constitutional relations of the States has been an invitation to them to participate in the high office of amending the Constitution. Every patriot must wish for a general amnesty at the earliest epoch consistent with public safety. For this great end there is need of a concurrence of all opinions, and the spirit of mutual conciliation. All parties in the late terrible conflict must work together in harmony. It is not too much to ask, in the name of the whole people, that, on the one side, the plan of restoration shall proceed in conformity with a willingness to cast the disorders of the past into oblivion; and that, on the other, the evidence of sincerity in the future maintenance of the Union shall be put beyond any doubt by the ratification of the proposed amendment to the Constitution, which provides for the abolition of slavery forever within the limits of our country. So long as the adoption of this amendment is delayed, so long will doubt and jealousy and uncertainty prevail. This is the measure which will efface the sad memory of the past; this is the measure which will most certainly call population and capital and security to those parts of the Union that need

them most. Indeed, it is not too much to ask of the States which are now resuming their places in the family of the Union to give this pledge of perpetual loyalty and peace. Until it is done, the past, however much we may desire it, will not be forgotten. The adoption of the amendment reunites us beyond all power of disruption. It heals the wound that is still imperfectly closed; it removes slavery, the element which has so long perplexed and divided the country; it makes of us once more a united people, renewed and strengthened, bound more than ever to mutual affection and support.

The amendment to the Constitution being adopted, it would remain for the States, whose powers have been so long in abeyance, to resume their places in the two branches of the national legislature, and thereby complete the work of restoration. Here it is for you, fellow citizens of the Senate, and for you, fellow citizens of the House of Representatives, to judge, each of you for yourselves, of the elections, returns, and qualifications of your own members.

The full assertion of the powers of the general Government requires the holding of circuit courts of the United States within the districts where their authority has been interrupted. In the present posture of our public affairs, strong objections have been urged to holding those courts in any of the States where the rebellion has existed; and it was ascertained by inquiry that the circuit court of the United States would not be held within the district of Virginia during the autumn or early winter, nor until Congress should have "an opportunity to consider and act on the whole subject." To your deliberations the restoration of this branch of the civil authority of the United States is therefore necessarily referred, with the hope that early provision will be made for the resumption of all its functions. It is manifest that treason, most flagrant in its character, has been committed. Persons who are charged with its commission should have fair and impartial trials in the highest civil tribunals of the country, in order that the Constitution and the laws may be fully vindicated; the truth clearly established and affirmed that treason is a crime, that traitors should be punished, and the offence made infamous; and, at the same time, that the question may be judicially settled, finally and forever, that no State of its own will has the right to renounce its place in the Union.

The relations of the general Government toward the four million inhabitants whom the war has called into freedom have engaged my most serious consideration. On the propriety of

attempting to make the freedmen electors by the proclamation of the Executive, I took for my counsel the Constitution itself, the interpretations of that instrument by its authors and their contemporaries, and recent legislation by Congress. When, at the first movement toward independence, the Congress of the United States instructed the several States to institute governments of their own, they left each State to decide for itself the conditions for the enjoyment of the elective franchise. During the period of the Confederacy there continued to exist a very great diversity in the qualifications of electors in the several States; and even within a State a distinction of qualifications prevailed with regard to the officers who were to be chosen. The Constitution of the United States recognizes these diversities when it enjoins that, in the choice of members of the House of Representatives of the United States, "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." After the formation of the Constitution it remained, as before, the uniform usage for each State to enlarge the body of its electors, according to its own judgment; and, under this system, one State after another has proceeded to increase the number of its electors, until now universal suffrage, or something very near it, is the general rule. So fixed was this reservation of power in the habits of the people, and so unquestioned has been the interpretation of the Constitution, that during the Civil War the late President never harbored the purpose—certainly never avowed the purpose—of disregarding it; and in the acts of Congress during that period nothing can be found which, during the continuance of hostilities, much less after their close, would have sanctioned any departure by the Executive from a policy which has so uniformly obtained. Moreover, a concession of the elective franchise to the freedmen, by act of the President of the United States, must have been extended to all colored men, wherever found, and so much have established a change of suffrage in the Northern, Middle, and Western States, not less than in the Southern and Southwestern. Such an act would have created a new class of voters, and would have been an assumption of power by the President which nothing in the Constitution or laws of the United States would have warranted.

On the other hand, every danger of conflict is avoided when the settlement of the question is referred to the several States. They can, each for itself, decide on the measure, and whether it is to be adopted at once and absolutely or introduced gradually

and with conditions. In my judgment, the freedmen, if they show patience and manly virtues, will sooner obtain a participation in the elective franchise through the States than through the general Government, even if it had power to intervene. When the tumult of emotions that have been raised by the suddenness of the social change shall have subsided it may prove that they will receive the kindliest usage from some of those on whom they have heretofore most closely depended.

But while I have no doubt that now, after the close of the war, it is not competent for the general Government to extend the elective franchise in the several States, it is equally clear that good faith requires the security of the freedmen in their liberty and their property, their right to labor, and their right to claim the just return of their labor. I cannot too strongly urge a dispassionate treatment of this subject, which should be carefully kept aloof from all party strife. We must equally avoid hasty assumptions of any natural impossibility for the two races to live side by side, in a state of mutual benefit and good-will. The experiment involves us in no inconsistency. Let us, then, go on and make that experiment in good faith, and not be too easily disheartened. The country is in need of labor, and the freedmen are in need of employment, culture, and protection. While their right of voluntary migration and expatriation is not to be questioned, I would not advise their forced removal and colonization. Let us rather encourage them to honorable and useful industry where it may be beneficial to themselves and to the country; and, instead of hasty anticipations of the certainty of failure, let there be nothing wanting to the fair trial of the experiment. The change in their condition is the substitution of labor by contract for the status of slavery. The freedman cannot fairly be accused of unwillingness to work so long as a doubt remains about his freedom of choice in his pursuits and the certainty of his recovering his stipulated wages. In this the interests of the employer and the employed coincide. The employer desires in his workmen spirit and alacrity, and these can be permanently secured in no other way. And if the one ought to be able to enforce the contract, so ought the other. The public interest will be best promoted if the several States will provide adequate protection and remedies for the freedmen. Until this is in some way accomplished there is no chance for the advantageous use of their labor; and the blame of ill success will not rest on them.

I know that sincere philanthropy is earnest for the immediate realization of its remotest aims; but time is always an

element in reform. It is one of the greatest acts on record to have brought four million people into freedom. The career of free industry must be fairly opened to them; and then their future prosperity and condition must, after all, rest mainly on themselves. If they fail, and so perish away, let us be careful that the failure shall not be attributable to any denial of justice. In all that relates to the destiny of the freedman we need not be too anxious to read the future; many incidents which, from a speculative point of view, might raise alarm will quietly settle themselves.

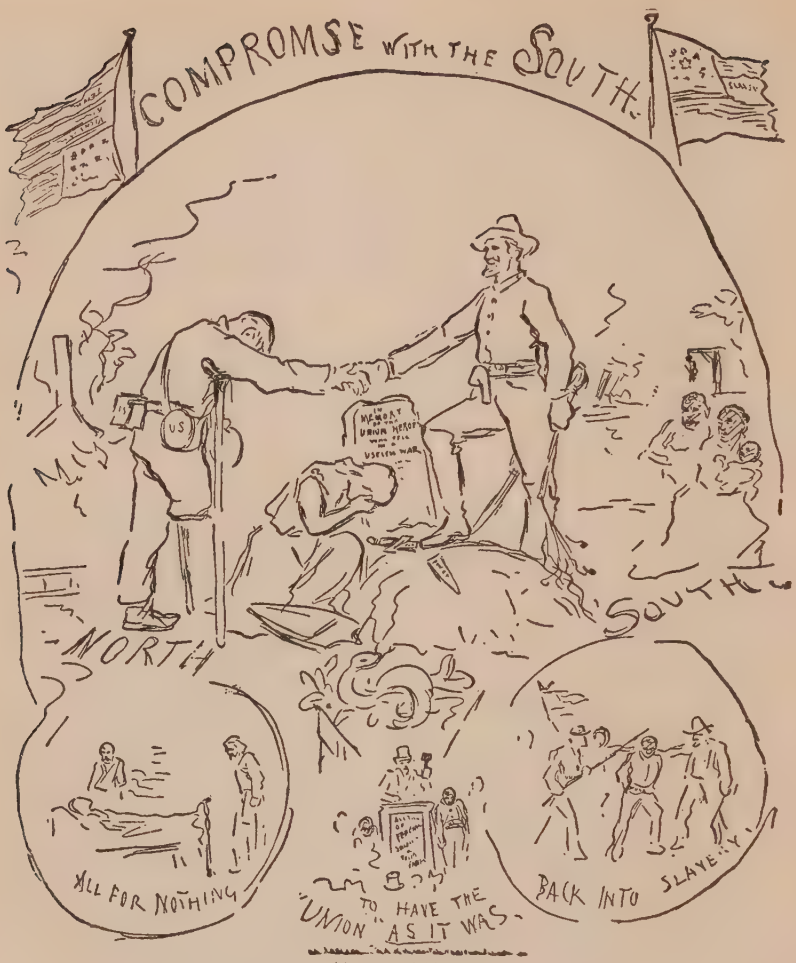
Opposition to the President's plan of reconstruction was at once shown in extreme form by resolutions introduced in the House on December 6, 1865, by John F. Farnsworth [Ill.].

Resolved (as the sense of this House), That, as all just powers of government are derived from the consent of the governed, that cannot be regarded as a just government which denies to a large portion of its citizens [*i. e.*, negroes], who share both its pecuniary and military burdens, the right to express either their consent or dissent to the laws which subject them to taxation and to military duty, and which refuses them full protection in the enjoyment of their inalienable rights.

Resolved, That, . . . while we have rewarded the foreigner, who is ignorant of our language and institutions, and who has but just landed upon our shores, with the right of citizenship for a brief service in the armies of the United States, good faith, as well as impartial justice, demands of this Government that it secure to the colored soldiers of the Union their equal rights and privileges as citizens of the United States.

Resolved, That we agree with the President of the United States that "mercy without justice is a crime"; and the admitting of rebels and traitors, upon whose hands the blood of slain patriots has scarcely dried, and upon whose hearts is the damning crime of starving to death loyal men taken as prisoners in battle, to the rights of citizenship and of suffrage, while we deny those rights to the loyal black man, who fought for the Union, and who fed and protected our starving soldiers, is a fit illustration of that truism.

Mr. Farnsworth demanded the previous question on his resolutions, which was refused by a vote of the House. These resolutions, together with a number of others relating to conditions to be exacted of the States lately in rebellion before they should be recognized as members of the Union, were referred to the joint committee of the House which had been appointed on December 4, 1865.



"PEACE!"

Cartoon by Thomas Nast

On the Joint Committee

Debate in the Senate, December 12, 1865

In the debate in the Senate on the appointment of this committee the lines of division between the Administration and the Opposition were clearly intimated.

Jacob M. Howard [Mich.] on December 12, wished it to be definitely pledged that, until the committee re-

ported, neither chamber would admit representatives of the rebel States.

Sir, what is the present position and status of the rebel States? In my judgment, they are simply conquered communities; subjugated by the arms of the United States—communities in which the right of self-government does not now exist. We hold them, as we know well, as the world knows to-day, not by their own free will and consent as members of the Union, but solely by virtue of our superior military power, which is exerted to that effect throughout the length and breadth of the rebel States. There is in those States no rightful authority, according to my view, at this time, but that of the United States, and every political act, every governmental act exercised within their limits, must necessarily be exercised and performed under the sanction and by the will of the conqueror.

In short, sir, they are not to-day loyal States; their population are not willing to-day, if we are rightly informed, to perform peaceably, quietly, and efficiently the duties which pertain to the population of a State in the Union and of the Union; and, for one, I cannot consent to recognize them, even indirectly, as entitled to be represented in either House of Congress at this time.

James R. Doolittle [Wis.] opposed the appointment of a special committee on the subject, which, he said, since it involved constitutional matters, properly and in accordance with the practice of the Senate, should be referred to the Judiciary Committee. Passing by the injustice of an unequal representation on the joint committee, operating as it did against the Senate, he objected on principle to any joint committee acting upon the question.

Mr. President, I believe that under the Constitution, upon all subjects of legislation but one, the two Houses are equal and coördinate branches of Congress. That one relates to their representation in the bodies, to their membership, that which constitutes their existence, which is essential to their life and their independence. That is confided to each House, and to each House alone, to act for itself. One House can no more share it with the other than it can share it with the Supreme Court or with the President. It is a matter over which its jurisdiction

is exclusive of every other jurisdiction. It is a matter in which its decisions, right or wrong, are absolute and without appeal. Sir, in my opinion, the Senate of the United States cannot give to a committee beyond its control this question of the representation in this body without a loss of its self-respect, its dignity, its independence; without an abandonment of its constitutional duty and a surrender of its constitutional powers.

Mr. President, there is a still graver objection to this resolution as it stands. The provision that, "until such report shall have been made and finally acted on by Congress, no member shall be received into either House from any of the so-called Confederate States," is a provision which, by law, excludes those eleven States from their representation in the Union. Sir, pass that resolution as it stands, and let it receive the signature of the President, and you have accomplished what the rebellion could not accomplish, what the sacrifice of half a million men could not accomplish in warring against this Government—you have dissolved the Union by act of Congress.

The Senator from Michigan talks about the status of these States. He may very properly raise the question whether they have any legislatures that are capable of electing Senators to this body. That is a question of fact to be considered; but as to whether they are States, and States still within the Union, notwithstanding their civil form of government has been overturned by the rebellion and their legislatures have been disorganized—that they are still States in this Union is the most sacred truth and the dearest truth to every American heart, and it will be maintained by the American people against all opposition, come from what quarter it may. Sir, the flag that now floats on the top of this Capitol bears thirty-six stars. Every star represents a State in this Union. I ask the Senator from Michigan does that flag, as it floats there, speak the nation's truth to our people and to the world or it is a hypocritical, flaunting lie? That flag has been borne at the head of our conquering legions through the whole South, planted at Vicksburg, planted at Columbia, Savannah, Charleston, Sumter; the same old flag which came down before the rebellion at Sumter was raised up again, and it still bore the same glorious stars; "not a star obscured," not one.

William P. Fessenden.—Were not some of those stars obscured?

Mr. Doolittle.—No, sir. These people have been disorganized in their civil governments in consequence of the war; the rebels overturned civil government in the first place, and we

entered with our armies and captured the rebellion; but did that destroy the States? Not at all. We entered the States to save them, not to destroy them. Our constitutional duty is to save them. and save every one of them, and not to destroy them. The guaranty in the Constitution is a guaranty to the States, and to every one of the States, and the obligation that rests upon us is to guarantee to South Carolina a republican form of government as a State in this Union, and not as a Territory. The doctrine of the territorial condition of these States, that they are mere conquered, subjugated Territories, as if we had conquered Canada or Mexico, will not stand argument for a moment. It is utterly at war with the ground on which we stand and have stood from the beginning. The ground we occupied was this: that no State nor the people of any State had any power to withdraw from the Union. They could not do it peacefully; they undertook to do it by arms; we crushed the attempt; we trampled their armies under our feet; we captured the rebellion; the States are ours; and we entered them to save and not to destroy.

The Senator then began to discuss the proceedings of the House of Representatives, when he was reminded by the president *pro tem.* of the Senate that such a discussion was not within the rules of order. Senator Doolittle then attained his object in parliamentary fashion by discussing the proceedings of a recent anti-administration caucus. Referring to its dominant spirit, not in his capacity as a Representative in Congress but as "a man known to history," he said:

I refer to the Hon. Thaddeus Stevens. His history is known to all men; and one thing we know of him certainly, that he is most bitterly, uncompromisingly hostile to the policy of the present Administration on the subject of reconstruction. He goes with him who goes the farthest, holding that even the State of Tennessee is an alien State at war with the United States; and, if I am not misinformed, in the convention at Baltimore which nominated Messrs. Lincoln and Johnson for President and Vice-President, he objected to the nomination of Andrew Johnson because he was an alien enemy! Sir, I have seen nothing in the history of that gentleman to lead me to suppose that he has in any respect changed his opinions, for it is not long since we read a speech of his delivered in the State

of Pennsylvania, marked with his usual ability, with his great boldness, with that cool assurance which sometimes almost rises to the sublime, in which he proposed, if I do not mistake, almost the entire and universal confiscation of the whole of the Southern States.

The appointment of the joint committee, said Senator Doolittle, was pressed through the caucus in "hot haste" by Mr. Stevens, with the "cool tact and talent" for which he is distinguished.

Who does not know that the leader of that assemblage did not desire to wait, nor did he dare to wait, until the President had spoken to the country in his annual message?

The Constitution of the United States requires the President from time to time to give to Congress information of the state of the Union. Who has any right to presume that the President will not furnish the information which his constitutional duty requires? He has at his control all the agencies which are necessary. There is the able Cabinet who surround him, with all the officers appointed under them: the postmasters under the Post-Office Department, the treasury agents under the Treasury Department, and almost two hundred thousand men under the control of the War Department in every part of this "disaffected" region, who can bring to the President information from every quarter of all the transactions that exist there.

Sir, we are here claiming to be the friends of the late lamented President, and the friends of him upon whom by his death the responsibilities of power have fallen. We sided in their election. They were nominated at Baltimore after the great experiment of reconstruction had already begun. Mr. Lincoln had already for months, for almost a year, been pursuing substantially the same policy of reconstruction which has since been followed by his successor. Andrew Johnson was himself one of the agencies which had been employed by Mr. Lincoln in the State of Tennessee in the hope of restoring civil government there; and it was under these circumstances, not with the approval of all men at Washington, but with the approval of the great masses of the people of this country, that Abraham Lincoln was renominated as President, and that Andrew Johnson was nominated to be Vice-President of the United States, and they were triumphantly indorsed and sustained by the people; and I tell Senators now, in my opinion—I speak with all respect to other gentlemen—that the President of the

United States will be sustained, in the views which he takes in his message, by the people of this country is as certain as the revolutions of the earth; and it is our duty to act harmoniously with him, to sustain him, to hold up his hands, to strengthen his heart, to speak to him words of faith, friendship, and courage.

Mr. President, I know that in all these Southern States there are a thousand things to give us pain, sometimes alarm, but, notwithstanding the bad appearance which from time to time presents itself in the midst of that boiling caldron of passion and excitement which the war has left still raging there, the real progress which we have made has been most wonderful. I say to you, Senators, it is my deliberate opinion that, if, when we adjourned last spring, an angel from the skies could have come down here and told us that at our meeting now our country would be in so hopeful a condition as it is, we would not have believed it; it would have been beyond our credence, beyond our belief. I am one of those who look forward with hope, for I believe God reigns and rules in the affairs of mankind. I look beyond the excitement of the hour and all the outbreaking passion which sometimes shows itself in the South, which leads them to make enactments in their legislatures which are disgraceful to themselves, and can never be sanctioned by the people of this country, and also, in spite of all the excitement of the North, I behold the future full of confidence and hope. We have only to come up like men, and stand as the real friends of the country and the Administration, and give to the policy of the President a fair and substantial trial, and all will be well.

Senator Fessenden indignantly replied:

Talk about the Administration! Sir, we are a part of the Administration, and a very important part of it. I have no idea of abandoning the prerogatives, the rights, and the duties of my position in favor of anybody, however that person or any number of persons may desire it. In questions of such infinite importance as this, involving the integrity and welfare of the Republic in all future time, we are solemnly bound, and our constituents will demand of us, that we examine them with care and fidelity, and act on our own convictions, and not upon the convictions of others.

I do not agree with the honorable Senator from Wisconsin that by passing a simple resolution raising a committee of our own body, and referring to it certain papers, if we conclude to

do so, we are infringing upon the rights of anybody or making an intimation with regard to any policy that the President may have seen fit to adopt and recommend to the country. Sir, I trust there are no such things as exclusive friends of the President among us, or gentlemen who desire to be so considered. I am disposed and ready to support him to the best of my ability, as every gentleman around me is, in good faith and with kind feeling in all that he may desire that is consistent with my views of duty to the country, giving him credit for intentions as good as mine, and with ability far greater, I am ready to asseverate.

But, sir, I do not agree with the doctrine that, because a certain line of policy has been adopted by one branch of the Government, or certain views are entertained by one branch of the Government, therefore, for that reason alone and none other, that is to be tried, even if it is against my judgment; and I do not say that it is or is not. That is a question to be considered. I have a great respect, not for myself, perhaps, but for the position which I hold as a Senator of the United States; and no measure of Government, no policy of the President or of the head of a department, shall pass me, while I am a Senator, if I know it, until I have examined it and given my assent to it; not on account of the source from which it emanates, but on account of its own intrinsic merits, and because I believe it will result in the good of my country. We have just gone through a state of war. While we were in it it became necessary all around to do certain things for which perhaps no strict warrant will be found; contrary, at any rate, to previous experience. That I admit most distinctly. Sir, I defended them from the beginning. I laid down the principle that the man who, placed in a position such as the President and other officers occupied, would not, in a time of war, and when his country was in peril, put his own reputation at hazard as readily as he would anything else in order to do his duty was not fit for his place. I upheld many things then that perhaps I would not uphold now because they are not necessary. The time must come when the Senate and House of Representatives, the Congress, must revert to its own original position.

Willard Saulsbury [Del.] opposed forming the joint committee.

Sir, suppose this committee should report that those States are not entitled to representation in this body, are you bound

by their action? Is there not a higher law, the supreme law of the land, which says, if they be States, that they shall each be entitled to two Senators on this floor? And shall a report of a joint committee of the two Houses override and overrule the fundamental law of the land? Sir, it is dangerous as a precedent, and I protest against it as a humble member of this body. If they be not States, then the object avowed for which the war was waged was false.

James Guthrie [Ky.] upheld the President's plan of reconstruction.

I know it has been said that the President has no authority to do these things. I read the Constitution and the laws of this country differently. He is to "take care that the laws be faithfully executed"; he is to suppress insurrection and rebellion. The power is put in his hands, and I do not see why, when he marches into a rebel State, he has not authority to put down a rebel government and put up a government that is friendly to the United States, and in accordance with it; I do not see why he cannot do that while the war goes on, and I do not see why he may not do it after the war is over. The people in those States lie at the mercy of the nation. I see no usurpation in what he has done, and, if the work is well done, I, for one, am ready to accept it. Are we to send out a commission to see what the men whom he has appointed have done? It is said that they are not to be relied on; that they have been guilty of treason, and we will not trust them. I hope that no such ideas will prevail here. I think this will be a cold shock to the warm feelings of the nation for restoration, for equal privileges and equal rights. They were in insurrection. We have suppressed that insurrection. They are now States of the Union; and, if they come here according to the laws of the States, they are entitled, in my judgment, to representation, and we have no right to refuse it. They are in a minority, and they would be in a minority even if they meant now what they felt when they raised their arms against the Government; but they do not, and, of those whom they will send here to represent them, nineteen out of twenty—even some of those who took up arms against us—will be just as loyal as any of us.

I really hope to see some one move a modification of the test oath, so that those who have repented of their disloyalty may not be excluded, for I really believe that a great many of those who took up arms honestly and wished to carry out the doctrine

of secession, and who have succumbed under the force of our arms and the great force of public opinion, can be trusted a great deal more than those who did not fight at all.

The joint committee as proposed by the House was then agreed upon by a vote of 33 to 11.

The members appointed upon the joint committee were: Senate—William P. Fessenden [Me.], chairman; James W. Grimes [Ia.], Ira Harris [N. Y.], Jacob M. Howard [Mich.], George H. Williams [Ore.], Republicans, and Reverdy Johnson [Md.], Democrat. House of Representatives—Thaddeus Stevens [Pa.], Elihu B. Washburne [Ill.], Justin S. Morrill [Vt.], John A. Bingham [O.], Roscoe Conkling [N. Y.], George S. Boutwell [Mass.], Henry T. Blow [Mo.], Republicans, and Andrew J. Rogers [N. J.], and Henry Grider [Ky.], Democrats.

On the following day (December 13) Henry Wilson [Mass.] brought forward in the Senate the bill "to maintain the freedom of the inhabitants in the States lately in rebellion," which he had introduced upon the first day of the session. This declared null and void all those present laws in force in these States which maintained inequality in the rights of citizens, particularly on account of race, and it prohibited the enactment of such laws in the future. Any person violating the act was to be punished by fine and imprisonment.

James G. Blaine, in his "Twenty Years of Congress," has summarized this debate as follows:

Civil Rights

Senate, December 13-20, 1865

Senator Wilson declared that he had "no desire to say harsh things of the South nor of the men who have been engaged in the Rebellion."

"I do not ask their property or their blood; I do not wish to disgrace or degrade them; but I do wish that they shall not be permitted to disgrace, degrade, or oppress anybody else. I offer this bill as a measure of humanity, as a measure that the

needs of that section of the country imperatively demand at our hands. I believe that if it should pass it will receive the sanction of nineteen-twentieths of the loyal people of the country. Men may differ about the power or the expediency of giving the right of suffrage to the negro; but how any humane,

THE OLD NURSE AND HER FOUNDLING

Sumner [in 1872].—Mr. Wilson, you must not turn away from this child. Greeley turns his back on me, and I look to you to take it under your wing at Philadelphia. Will you?

From the collection of the New York Public Library

just, and Christian man can for a moment permit the laws that are on the statute books of the Southern States, and the laws now pending before their legislatures, to be executed upon men whom we have declared to be free I cannot comprehend."

Reverdy Johnson [Md.] replied to Mr. Wilson in a tone of apology for the laws complained of, but took

occasion to give his views of the status of the States lately in rebellion.

"I have now, and I have had from the first, a very decided opinion that they are States in the Union and that they never could have been placed out of the Union without the consent of their sister States. The insurrection terminated, the authority of the Government was thereby reinstated; *eo instanti*[1] they were invested with all the rights belonging to them originally—I mean as States. In my judgment our sole authority for the acts which we have done during the last four years was the authority communicated to Congress by the Constitution to suppress insurrection. If the power can only be referred to that clause, in my opinion, speaking, I repeat, with great deference to the judgment of others, the moment the insurrection was terminated there was no power whatever left in the Congress of the United States over those States; and I am glad to see, if I understand his message, that in the view I have just expressed I have the concurrence of the President of the United States."

Charles Sumner [Mass.] sustained Senator Wilson's bill in an elaborate argument delivered on the 20th of December. He declared that Mr. Wilson's bill was simply to maintain and carry out the Proclamation of Emancipation. The pledge there given was that the Executive Government of the United States, including the military and naval authority thereof, would recognize and maintain the freedom of such persons.

"This pledge is without limitation in space or time. It is as extended and as immortal as the Republic itself; to that pledge we are solemnly bound; wherever our flag floats, as long as time endures, we must see that it is sacredly observed. The performance of that pledge cannot be intrusted to another, least of all to the old slave masters, embittered against their slaves. It must be performed by the National Government. The power that gave freedom must see that freedom is maintained.

"Three of England's greatest orators and statesmen, Burke, Canning, and Brougham, at successive periods unite in declaring, from the experience of the British West Indies, that whatever the slave masters undertook to do for their slaves was always arrant trifling; that, whatever might be its plausible

[1] "In that instant."

form, it always wanted the executive principle. More recently the Emperor of Russia, in ordering the emancipation of the serfs, declared that all previous efforts had failed because they had been left to the spontaneous initiative of the proprietors. I assume that we shall not leave to the old slave proprietors the maintenance of that freedom to which we are pledged, and thus break our own promise and sacrifice a race."

In concluding his speech Mr. Sumner referred to the enormity of the wrongs against the freedmen as something that made the blood curdle.

"In the name of God, let us protect them; insist upon guaranties; pass the bill under consideration; pass any bill, but do not let this crying injustice rage any longer. An avenging God cannot sleep while such things find countenance. If you are not ready to be the Moses of an oppressed people, do not become their Pharaoh."

Willard Saulsbury [Del.] made a brief reply to Mr. Sumner, not so much to argue the points put forward by the Senator from Massachusetts, not so much to deny the facts related by him or to discuss the principles which he had presented, as to announce that "it can be no longer disguised that there is in the party which elected the President an opposition party to him. Nothing can be more antagonistic than the suggestions contained in his message and the speeches already made in both Houses of Congress." He adjured the President to be true and faithful to the principles he had foreshadowed, and pledged him "the support of two million men in the States which have not been in revolt, and who did not support him for his high office."

Edgar Cowan [Pa.], one of the Republican Senators who had indicated a purpose to sustain the President, was evidently somewhat stunned by Mr. Sumner's speech. He treated the outrages of which Mr. Sumner complained as exceptional instances of bad conduct on the part of the Southern people. "One man out of ten thousand," said Mr. Cowan, "is brutal to a negro, and that is paraded here as a type of the whole people of the South; whereas nothing is said of the other nine thou-

sand nine hundred and ninety-nine men who treat the negro well.'' Mr. Cowan's argument was altogether inapposite, for what Mr. Sumner and Mr. Wilson had complained of was not the action of individual men in the South, but of laws solemnly enacted by legislatures whose right to act had been recognized by the Executive Department of the National Government and which had indeed been organized in pursuance of the President's reconstruction policy.

Senator Cowan moved to refer the bill to the Judiciary Committee, but no action was taken on the motion. It was naturally considered unofficially by the Select Committee of Fifteen.

CHAPTER X

Reconstruction by Congressional Authority

Debate on Reconstruction in the House: in Favor of the Plan of the President, William E. Finck [O.], Henry J. Raymond [N. Y.], George R. Latham [W. Va.], Daniel E. Voorhees [Ind.]; Opposed, Thaddeus Stevens [Pa.], William D. Kelley [Pa.], William E. Niblack [Ind.], John W. Farnsworth [Ill.], Thomas A. Jenckes [R. I.], John A. Bingham [O.], Robert C. Schenck [O.], Rufus P. Spalding [O.], Samuel Shellabarger [O.], Henry C. Deming [Conn.]; House Refuses to Vote Its Confidence in the President's Plan.

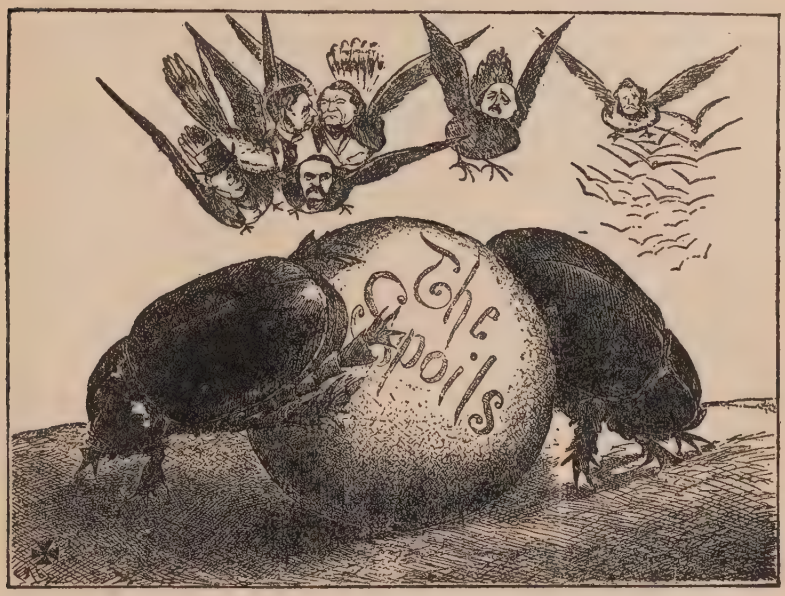
WITHOUT waiting for the report of the special committee Thaddeus Stevens [Pa.] formally opened the debate upon reconstruction in the House of Representatives on December 18, 1865. His speech is thus summarized by James G. Blaine in his "Twenty Years of Congress":

Mr. Stevens took the most radical and pronounced ground touching the relation to the National Government of the States lately in rebellion. He contended that "there are two provisions in the Constitution, under one of which the case must fall." The Fourth Article says that "new States may be admitted by the Congress into this Union." "In my judgment," said Mr. Stevens, "this is the controlling provision in this case. Unless the law of nations is a dead letter, the late war between the two acknowledged belligerents severed their original contracts and broke all the ties that bound them together. The future condition of the conquered power depends on the will of the conqueror. They must come in as new States or remain as conquered provinces." This was the theory which Mr. Stevens had steadily maintained from the beginning of the war, and which he had asserted as frequently as opportu-

nity was given in the discussions of the House. He proceeded to consider the probable alternative. "Suppose," said he, "as some dreaming theorists imagine, that these States have never been out of the Union, but have only destroyed their State governments, so as to be incapable of political action, then the fourth section of the Fourth Article applies, which says, 'The United States shall guarantee to every State in this Union a republican form of government.' But," added he, "who is the United States? Not the judiciary, not the President; but the sovereign power of the people, exercised through their representatives in Congress, with the concurrence of the Executive. It means political government—the concurrent action of both branches of Congress and the Executive." He intended his line of debate to be an attack, at the very beginning, upon the assumption of the President in his attempt at reconstruction. "The separate action of the President, or the Senate, or the House," added Mr. Stevens, "amounts to nothing, either in admitting new States or guaranteeing republican forms of government to lapsed or outlawed States. Whence springs," asked he, "the preposterous idea that any one of these, acting separately, can determine the right of States to send Representatives or Senators to the Congress of the Union?"

Though many others had foreseen and appreciated the danger, Mr. Stevens was the first to state in detail the effect which might be produced by the manumission of the slaves upon the congressional representation of the Southern States. He pointed out the fact that by counting negroes in the basis of representation the number of Representatives from the South would be eighty-three; excluding negroes from the basis of representation, they would be reduced to forty-six; and so long as negroes were deprived of suffrage he contended that they should be excluded from the basis of representation. "If," said he, "they should grant the right of suffrage to persons of color, I think there would always be white men enough in the South, aided by the blacks, to divide representation and thus continue loyal ascendency. If

they should refuse to thus alter their election laws it would reduce the representation of the late slave States and render them powerless for evil.'' Mr. Stevens' obvious theory at that time was not to touch the question



THE GREAT RECONSTRUCTION BALL
Those Who Get It Up and Those Who Invite Themselves to It
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of suffrage by national interposition, but to reach it more effectively perhaps by excluding the entire colored population from the basis of congressional representation, until by the action of the Southern States themselves the elective franchise should be conceded to the colored population. As he proceeded in his speech Mr. Stevens waxed warm with all his ancient fire on the slavery question. ''We have,'' said he, ''turned, or are about to turn, loose four million slaves without a hut to shelter them or a cent in their pockets. The diabolical laws of slavery have prevented them from acquiring an education, understanding the commonest laws of contract, or of managing the ordinary business of life. This Congress is

bound to look after them until they can take care of themselves. If we do not hedge them around with protecting laws, if we leave them to the legislation of their old masters, we had better have left them in bondage. Their condition will be worse than that of our prisoners at Andersonville. If we fail in this great duty now when we have the power, we shall deserve to receive the execration of history and of all future ages."

In conclusion Mr. Stevens declared that "Two things are of vital importance: first, to establish a principle that none of the rebel States shall be counted in any of the amendments to the Constitution until they are duly admitted into the family of States by the law-making power of their conqueror; second, it should now be solemnly decided what power can revive, recreate, and reinstate these provinces into the family of States and invest them with the rights of American citizens. It is time that Congress should assert its sovereignty and assume something of the dignity of a Roman senate." He denounced with great severity the cry that "This is a white man's government." "If this republic," said he with great earnestness, "is not now made to stand on solid principle it has no honest foundation and the Father of all men will shake it to its center. If we have not yet been sufficiently scourged for our national sin to teach us to do justice to all God's creatures, without distinction of race or color, we must expect the still more heavy vengeance of an offended Father, still increasing his afflictions, as he increased the severity of the plagues of Egypt until the tyrant consented to do justice, and when that tyrant repented of his reluctant consent and attempted to reënslave the people, as our Southern tyrants are attempting to do now, he filled the Red Sea with broken chariots and drowned horses, and strewed the shores with the corpses of men. Sir, this doctrine of a white man's government is as atrocious as the infamous sentiment that damned the late Chief Justice to everlasting fame, and I fear to everlasting fire."

The Administration, says Mr. Blaine, saw that the speech of Mr. Stevens was the first gun fired in a deter-

mined war to be waged against its policy and its *prestige;* it therefore determined upon as forcible a reply as possible, and for this duty detailed a Republican supporter of the President, Henry J. Raymond, who, though he now appeared for the first time in Congress, was one of the most influential men in the country, having founded and conducted the New York *Times* and taken a prominent part in the anti-slavery agitation and the formation and direction of the Republican party. As an editor and polemical writer he had no peer but Horace Greeley, of the New York *Tribune,* who was in opposition to the President, and he had acquired force and facility as a debater by distinguished service in the New York legislature.

Mr. Raymond spoke on December 21. Unfortunately for the effect, both moral and argumentative, of his speech the floor was taken before him by a State Rights Democrat of mediocre ability, William E. Finck [O.], who had felt called upon to reply to Mr. Stevens.

Mr. Finck made a number of plausible points, though none were very profound. He said that if Tennessee were not a State within the Union, as Mr. Stevens had insisted was the case, then Andrew Johnson, citizen of Tennessee, was not eligible to hold the office of President. Allegiance and protection being reciprocal duties, by what right did we demand from the South the one and refuse to it the other? What became of the doctrine of equality when the white man was stripped of his political rights in order to have these conferred upon the negro? He wished to restore the Union to its true constitutional character, a confederated and not consolidated government.

Mr. Raymond clearly indicated at the beginning of his speech that the Administration was not over-grateful for the support of Democrats of the Vallandigham sort, whom Mr. Finck represented.

I cannot help wishing, sir, that these indications of an interest in the preservation of our Government had come somewhat sooner. If we could have had from that side of the House such indications of an interest in the preservation of the

Union, such heartfelt sympathy with the efforts of the Government for the preservation of that Union, such hearty denunciation of those who were seeking its destruction, while the war was raging, I am sure we might have been spared some years of war, some millions of money, and rivers of blood and tears.

Mr. Raymond's principal aim was to join issue with Mr. Stevens on his theory of *dead States.*

"The gentleman from Pennsylvania believes that what we have to do is to create new States out of this conquered territory, at the proper time, many years distant, retaining them meanwhile in a territorial condition, and subjecting them to precisely such a state of discipline and tutelage as Congress and the Government of the United States may see fit to prescribe. If I believe in the premises he assumes, possibly, though I do not think probably, I might agree with the conclusion he has reached; but, sir, I cannot believe that these States have ever been out of the Union or that they are now out of the Union. If they were, sir, how and when did they become so? By what specific act, at what precise time, did any one of those States take itself out of the American Union? Was it by the Ordinance of Secession? I think we all agree that an ordinance of secession passed by any State of the Union is simply a nullity because it encounters the Constitution of the United States, which is the supreme law of the land.

Did the resolutions of these States, the declarations of their officials, the speeches of members of their legislatures, or the utterances of their press accomplish the result? Certainly not. They could not possibly work any change whatever in the relations of these States to the general Government. All their ordinances and all their resolutions were simply declarations of a purpose to secede. Their secession, if it ever took place, certainly could not date from the time when their intention to secede was first announced. After declaring that intention, they proceeded to carry it into effect. How? By war. By sustaining their purpose by arms against the force which the United States brought to bear against it. Did they sustain it? Were their arms victorious? If they were, then their secession was an accomplished fact. If not, it was nothing more than an abortive attempt—a purpose unfulfilled. This, then, is simply a question of fact, and we all know what the fact is. They did not succeed. They failed to maintain their ground by force of arms—in other words, they failed to secede.

But the gentleman from Pennsylvania [Mr. Stevens] insists that they did secede, and that this fact is not in the least affected by the other fact that the Constitution forbids secession. He says that the law forbids murder, but that murders are nevertheless committed. But there is no analogy between the two cases. If secession had been accomplished, if these States had gone out, and overcome the armies that tried to prevent their going out, then the prohibition of the Constitution could not have altered the fact. In the case of murder the man is killed, the murder is thus committed in spite of the law. The fact of killing is essential to the committal of the crime; and the fact of going out is essential to secession. But in this case there was no such fact.

During all these four years of war Congress has been making laws for the government of those very States, and the gentleman from Pennsylvania has voted for them, and voted to raise armies to enforce them. Why was this done if they were a separate nation? Those laws were made for them as States.

The gentleman from Pennsylvania [Mr. Stevens] spoke of States forfeiting their State existence by the fact of rebellion. Well, I do not see how there can be any such forfeiture involved or implied. The individual citizens of those States went into the rebellion. They thereby incurred certain penalties under the laws and Constitution of the United States. What the States did was to endeavor to interpose their State authority between the individuals in rebellion and the Government of the United States, which assumed, and which would carry out the assumption, to declare those individuals traitors for their acts. The individuals in the States who were in rebellion, it seems to me, were the only parties who under the Constitution and laws of the United States could incur the penalties of treason. I know of no law, I know of nothing in the Constitution of the United States, I know of nothing in any recognized or established code of international law, which can punish a State as a State for any act it may perform. It is certain that our Constitution assumes nothing of the kind. It does not deal with States, except in one or two instances, such as elections of members of Congress, and the election of electors of President and Vice-President.

A State cannot be indicted; a State cannot be tried; a State cannot be hung for treason. The individuals in a State may be so tried and hung, but the State, as an organization, as an organic member of the Union, still exists, whether its individual citizens commit treason or not.

WILLIAM D. KELLEY [Pa.].—I desire to ask the gentleman this question: by virtue of what does a State exist? Is it by virtue of a constitution and by virtue of its relations to the Union? That is, does a State of the Union exist, first by virtue of a constitution and secondly by virtue of its practical relations to the Government of the United States? And, further, I would ask whether those States, acting by conventions of the people, have not overthrown the Constitution which made them parts of the Union, and thereby destroyed or suspended—phrase it as you will—the practical relations which made them parts of the Union?

MR. RAYMOND.—I will say, in reply to the gentleman from Pennsylvania [Mr. Kelley], that it is not the practical relations of a State at any particular moment which make it a State or a part of the Union. What makes a State a part of the Union is the Constitution of the United States; and the rebel States have not yet destroyed that.

MR. KELLEY.—The question I propound is whether a State does not exist by virtue of a constitution, its constitution, which is a thing which may be modified or overthrown?

MR. RAYMOND.—Certainly.

MR. KELLEY.—And whether these rebellious constitutions or States have not been overthrown?

MR. RAYMOND.—A State does not exist by virtue of any particular constitution. It always has a constitution, but it need not have a specific constitution at any specific time. A State has certain practical relations to the Government of the United States. But the fact of those relations being practically operative and in actual force at any moment does not constitute its relationship to the Government or its membership of the United States. Its practical operation is one thing. The fact of its existence as an organized community, one of the great national community of States, is quite another thing.

MR. KELLEY.—Let me interrupt the gentleman one moment longer. I will ask him whether, if the Constitution be overthrown or destroyed and its practical relations cease, there be any State left?

MR. RAYMOND.—Why, sir, if there be no constitution of any sort in a State, no law, nothing but chaos, then that State would no longer exist as an organization. But that has not been the case, it never is the case in great communities, for they always have constitutions and forms of government. It may not be a constitution or form of government adapted to its relation to the Government of the United States; and that would be an

evil to be remedied by the Government of the United States. That is what we have been trying to do for the last four years. The practical relations of the governments of those States with the Government of the United States were all wrong—were hostile to that Government. They denied our jurisdiction, and they denied that they were States of the Union, but their denial did not change the fact; and there was never any time when their organizations as States were destroyed. A dead State is a solecism, a contradiction in terms, an impossibility.

These are, I confess, rather metaphysical distinctions, but I did not raise them. Those who assert that a State is destroyed whenever its constitution is changed, or whenever its practical relations with this Government are changed, must be held responsible for whatever metaphysical niceties may be necessarily involved in the discussion.

I regard these States as just as truly within the jurisdiction of the Constitution, and therefore just as really and truly States of the American Union now, as they were before the war. Their practical relations to the Constitution of the United States have been disturbed, and we have been endeavoring, through four years of war, to restore them and make them what they were before the war. The victory in the field has given us the means of doing this; we can now reëstablish the practical relations of those States to the Government. Our actual jurisdiction over them, which they vainly attempted to throw off, is already restored. The conquest we have achieved is a conquest over the rebellion, not a conquest over the States whose authority the rebellion had for a time subverted.

For these reasons I think the views submitted by the gentleman from Pennsylvania [Mr. Stevens] upon this point are unsound. Let me next cite some of the consequences which, it seems to me, must follow the acceptance of his position. If, as he asserts, we have been waging war with an independent power, with a separate nation, I cannot see how we can talk of treason in connection with our recent conflict or demand the execution of Davis or anybody else as a traitor. Certainly if we were at war with any other foreign power we should not talk of the treason of those who were opposed to us in the field. If we were engaged in a war with France and should take as prisoner the Emperor Napoleon, certainly we could not talk of him as a traitor or as liable to execution. I think that by adopting any such assumption as that of the honorable gentleman we surrender the whole idea of treason and the punishment of traitors. I think, moreover, that we accept, virtually and practically, the

doctrine of State sovereignty, the right of a State to withdraw from the Union, and to break up the Union at its own will and pleasure. I do not see how upon those premises we can escape that conclusion. If the States that engaged in the late rebellion constituted themselves, by their ordinances of secession or by any of the acts with which they followed those ordinances, a separate and independent power, I do not see how we can deny the principles on which they professed to act, or refuse assent to their practical results. I have heard no clearer, no stronger statement of the doctrine of State sovereignty as paramount to the sovereignty of the nation than would be involved in such a concession. Whether he intended it or not, the gentleman from Pennsylvania [Mr. Stevens] actually assents to the extreme doctrines of the advocates of secession.

William E. Niblack [Ind.].—I beg leave to inquire of the gentleman whether the theory of the gentleman from Pennsylvania, which he is combating, would not also, if carried to its legitimate consequences, make those who resisted the Confederacy in the insurrectionary States guilty of treason to the Confederacy or to those States?

Mr. Raymond.—I was just going to remark that another of the consequences of this doctrine, as it seems to me, would be our inability to talk of loyal men in the South. Loyal to what? Loyal to a foreign, independent power, as the United States would become under those circumstances? Certainly not. Simply disloyal to their own government, and deserters, or whatever you may choose to call them, from that to which they owe allegiance to a foreign and independent state.

Now, there is another consequence of the doctrine which I shall not dwell upon, but simply suggest. If that Confederacy was an independent power, a separate nation, it had the right to contract debts; and we, having overthrown and conquered that independent power, according to the theory of the gentleman from Pennsylvania, would become the successors, the inheritors, of its debts and assets, and we must pay them. Sir, that is not simply a theory or a claim thrown out in debate here; it is one advanced on behalf of the Government of Great Britain as against us in the case in which cotton belonging to the Southern Confederacy was claimed in Liverpool.

Our Government has denied from the beginning, and denies now, that the Confederacy was ever such a corporation, such an independent body of men as could contract debts, whether we are liable for them or not. The declaration of our Secretary of State in his recent correspondence on that subject shows

that we have always steadily denied that the Confederacy was such a corporation as could contract a valid debt, whether we would be made responsible for it or not. But one thing is very clear, that, if we recognize the doctrine that those lately in rebellion against our Government constituted an independent power, we must concede their ability to contract debts. Whether we as their successors are to pay them or not is another question, but the claim has been made, and denied only on the ground of the incapacity of the rebel Confederacy to contract debts or binding engagements of any sort.

JOHN F. FARNSWORTH [Ill.].—I would like to ask the gentleman from New York whether he is entirely sure we have the right to try Jefferson Davis for treason inasmuch as our Government has given to them belligerent rights, has recognized and respected the commissions that he has issued?

MR. RAYMOND.—I have no doubt of it. I do not think that the treason of Jefferson Davis has anything to do with the fact that we conceded humane treatment to our prisoners of war. Because we had granted to these States, as a power waging war, rights usually accorded to nations at war, we were not therefore concluded from proceeding against them as traitors.

The decision of the Supreme Court asserts that we have the right to proceed against them as traitors, or, rather, that we have the right to exercise against them both the powers of sovereignty and of belligerents; that the one did not exclude the other. It would be an extraordinary circumstance if, because we treated them humanely as prisoners of war, we have not the right to hold them responsible to the laws they have broken.

Now, if, according to the view I have presented, we are to deal with those States as States within the Union, the next question that recurs is *how* are we to deal with them? The gentleman from Ohio [Mr. Finck] who preceded me took the ground that they had only to resume their places and their powers in the National Government—that their Representatives have only to come into this Hall and take their seats without question and without conditions of any sort. I cannot concur, sir, in this view. I do not think these States have any such rights. On the contrary, I think we have a full and perfect right to require certain conditions, in the nature of guaranties for the future, and that right rests, primarily and technically, on the surrender we may and must require at their hands. The rebellion has been defeated. A defeat always implies a surrender, and in a political sense a surrender implies more than

the transfer of the arms used on the field of battle. It implies, in the case of civil war, a surrender of the principles and doctrines, of all the weapons and agencies, by which the war has been carried on. The military surrender was made on the field of battle, to our generals as the agents and representatives of the Commander-in-Chief of the armies of the United States. But this is not all. They have still to surrender——

THOMAS A. JENCKES [R. I.].—Was not the surrender of the rebel arms made to the people of the United States?

MR. RAYMOND.—It ought to be, and must be to them through their representatives. The rebels surrendered to the generals of our armies, who were commissioned by the President of the United States, himself the representative of the people.

MR. JENCKES.—Not to the generals as the agents of the President, but as the representatives of the military authority of the people of the United States.

MR. RAYMOND.—Why, certainly all authority belongs to the people. It is a mere distinction of words, and scarcely that.

MR. JENCKES.—I beg pardon of the gentleman. It seems to me that it is an essential distinction.

MR. RAYMOND.—Well, if it seems important to the gentleman from Rhode Island or to anybody else, I am quite willing to make the addition to my remark which he suggests. I will say, then, that in surrendering on the field of battle they surrendered to the generals who were in command of the armies, as agents of the President of the United States, who was and is the representative of the people of the United States. If that explanation is satisfactory to the gentleman I am very happy to make it; and perhaps I am obliged to him for having enabled me to state it a little more specifically and accurately than I did at first.

Now, there must be at the end of the war a similar surrender on the political field of controversy. That surrender is due as an act of justice from the defeated party to the victorious party. It is due also, and we have a right to exact it, as a guaranty for the future. Why do we demand the surrender of their arms by the vanquished in every battle? We do it that they may not renew the contest. Why do we seek in this and all similar cases a surrender of the principles for which they fought? It is that they may never again be made the basis of controversy and rebellion against the Government of the United States.

Now, what are those principles which should be thus surrendered? The principle of State sovereignty is one of them.

It was the cornerstone of the rebellion—at once its animating spirit and its fundamental basis. Deeply ingrained as it was in the Southern heart, it must be surrendered. The ordinances in which it was embodied must not only be repealed, the principle itself must be abandoned, and the ordinances, so far as this war is concerned, be declared null and void, and that declaration must be embodied in their fundamental constitutions. We have a right to insist upon this; and it must be apparent that, so far as that principle is concerned, this war was a permanent success.

JOHN A. BINGHAM [O.].—The gentleman will allow me to make the inquiry whether, if that were done to-day by South Carolina, and the people of that insurgent State restored to all their powers in this Union, they could not blot it out to-morrow by every construction that has ever been given to the operation of the Constitution of the United States upon any State maintaining its relations to this Government? What guaranty would that be?

MR. RAYMOND.—I might as well ask the gentleman whether if this Congress pass a certain law to-day they may not repeal it to-morrow. I do not know anything that any community can do that they cannot undo at some future time.

MR. BINGHAM.—When the gentleman talks of guaranties to the people of the United States I ask him whether there is not some other method that occurs to him by which these guaranties can be obtained than to submit simply to the will of the insurgent States? Is it not to be done by putting the guaranty in the Constitution of the whole people of the United States, and thus placing it beyond the power of South Carolina to repeal it?

MR. RAYMOND.—Well, Mr. Chairman, there have been a good many things put in the Constitution of the United States which South Carolina did not deem beyond her power, and they undertook to prove that fact, but they did not succeed. My own impression is that whatever is now a part of the Constitution and laws of this country is beyond the power of South Carolina to disturb. I might as well ask the gentleman whether, when the enemy surrendered its ordnance in the field, we ought not to refuse to accept it because they might possibly at some future day come and recapture it.

MR. BINGHAM.—The gentleman will excuse me. He talked of new guaranties. The people of the United States undoubtedly demand them. But I wish him to answer intelligibly what new guaranty is given by incorporating in the constitution of South Carolina the mere formula that she by her constitution

declares that she has not the right to secede, when she has the power the very next day to strike it out? Is that a new guaranty?

Mr. Raymond.—Certainly it is. That has never been in the constitution of South Carolina before. If she puts it there now, it is a new guaranty is it not? Whether it is an adequate form of that guaranty or not is another question which I have not discussed. South Carolina has always hitherto asserted the right of secession, and under that assertion she attempted to secede. If she now repudiates or abandons that right, we have certainly that new assurance that she will not renew the attempt. We shall certainly have this tangible admission on her part that, if she does again rebel, it will be in direct repudiation and contempt of her own principles. I will not say that nothing more would be desired or accepted. I am quite willing, if it can be done, to put that acknowledgment into the Constitution of the United States. But I think it is there now, and that it always has been there, and that there is no more doubt about it now than if it were stated in express terms. When I read in the Constitution of the United States that "this Constitution shall be the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding. I deem that to be as plain as any declaration can be against the doctrine of State sovereignty, and I cannot believe that any form of words on our part would be more explicit or more emphatic. But if the gentleman can get any more explicit denial into the Constitution of the United States, he will find me voting for it every time.

Now there is another thing to be surrendered by the defeated rebellion, and that is the obligation to pay the rebel war debt.

Robert C. Schenck [O.].—Will the gentleman allow me to inquire whether that guaranty in the constitution of South Carolina amounts to anything more than the signature of an indorser on the back of a note, who may at any time thereafter take his name from the paper?

Mr. Raymond.—Perhaps not; perhaps you can get better security. If you can, I certainly shall not object. But, such as it is, it is at all events something gained, and it is only in that light that I have referred to it. Neither of the distinguished gentlemen from Ohio [Messrs. Bingham and Schenck], able lawyers as they are, will deny that we had the right to demand that guaranty of South Carolina. And, if it was worth while to demand it, it is hardly worth while, having got it, to say that it is of no value at all. We expose ourselves by

so doing to the imputation of trifling in having demanded it at all.

MR. BINGHAM.—I have no doubt at all that the people of the United States, those who maintained the integrity of their Constitution, had the right to demand of South Carolina a perpetual guaranty in the future that she should not even claim the color of authority to secede and set up a government against the constitutional authority of the Government of the nation. And when they demand that I take it that the people of the United States are not to be told that South Carolina alone is to have the control and keeping of that guaranty. But the people of the United States are hereafter to be the guardians of their own honor, and the protectors of their own nationality, and they will take into their own keeping those great guaranties that are to secure peace and prosperity to every section of the Union in future, and to secure themselves against this work of secession under the pretence of State sovereignty.

MR. RAYMOND.—Will the gentleman from Ohio [Mr. Bingham] inform me who has ever pretended that the people of the nation are not to take into their own hands the guaranties of their own security and their own honor?

MR. BINGHAM.—Whoever pretends that future guaranties against the pretension of the right of a State to secede are to rest with the State alone, stands simply and solely on the resolutions of Virginia of 1798, out of the pernicious assumptions of which came all our trouble.

MR. RAYMOND.—The gentleman tries to fasten upon me a position that I have never taken. And it required all his ingenuity to reach the point at which he has at last arrived. I said that we have a right to require from the people of South Carolina the abandonment of their doctrine of secession. Now, whether we may not also require that the people of the United States shall reaffirm that and put it into the Constitution of the United States is a thing about which I have said nothing whatever, except that whenever presented in a proper form it will have my assent.

MR. BINGHAM.—I am glad to hear the gentleman say that. For if these guaranties are essential, and the gentleman seems to agree that they are, then it is highly important that the American people should determine them, without being interrupted in the settlement of that question by the intervention of South Carolina under the pretension that she is a State in this Union, with all the reserved rights of a State. What right, I would ask, has she to set up any such pretension?

MR. RAYMOND.—Well, Mr. Chairman, the gentleman must settle that matter with South Carolina.

MR. BINGHAM.—I propose, in coöperation with the loyal people and their Representatives in Congress, to settle it with South Carolina.

MR. RAYMOND.—I can only say on that subject that South Carolina found herself invited by the President of the United States, the representative of the people of the United States, as the gentleman from Rhode Island [Mr. Jenckes] very properly insists that I shall term him, to coöperate in the restoration of the Union—to resume her functions as a State of the Union, and, as a preliminary step, to repudiate this debt and give this guaranty of her loyalty and good faith.

MR. BINGHAM.—I beg the gentleman's pardon. I do not think he can find anywhere any authority for the statement that the President of the United States ever invited South Carolina to exercise any voice or vote on that question here in Congress.

MR. RAYMOND.—The President certainly has indicated to the Southern States that he expected them to declare, in their constitutions, that their ordinances of secession were null and void; and in his message he speaks of an invitation to them to renew their functions as States of the Union; and that covers the whole ground that I attempted to speak upon in connection with this point.

MR. BINGHAM.—I only wish to know the gentleman's position—to ascertain whether it is or is not that South Carolina and other seceding States now sustain such relations to this Union that they have the right to-day, under the Constitution, to have representation upon this floor according to the apportionment of 1862.

MR. RAYMOND.—Without any guaranties or conditions at all?

MR. BINGHAM.—I contend that all guaranties are worthless, unless embodied in the Constitution of the United States. Does the gentleman insist that South Carolina has now the right, under the Constitution, to representation in Congress as a State of the Union because her relations to the Governcment are, under the Constitution, those of a constitutional State in the Union?

MR. RAYMOND.—I have already said, sir, and said it as clearly and emphatically as I can, that we have a right to demand, and that we are in duty bound to demand, certain concessions from all the States lately in rebellion, as parts of their surrender, and as conditions of their resuming their functions in the Gov-

ernment of the nation. As to their representation in Congress, I should, before determining that question, wish to know something more of the character and position of the men they may send, and of what they have done.

MR. BINGHAM.—So do I; and I think that Congress ought to decide the question.

MR. RAYMOND.—I have not assumed to decide that point. I have not said anything about what the Southern States have done. I have simply said what we have a right to require them to do; and the renunciation of the doctrine of State sovereignty is one thing that we have a right to require at their hands. We have a right also to require them to do another thing—to repudiate their obligation for debts incurred in carrying on the war against the Government. Whether they have done this or not is another matter which may come up at another time.

There is another thing which we have the right to require; and that is the prohibition of slavery. We have the right to require them to do this, not only in their State constitutions, but in the Constitution of the United States. And we have required it, and it has been conceded. They have also conceded that Congress may make such laws as may be requisite to carry that prohibition into effect, which includes such legislation as may be required to secure for them protection of their civil and personal rights—their "right to life, liberty, and the pursuit of happiness." This I am sure the gentleman will concede to be a substantial guaranty—one placed beyond the power of any State to recall or repeal.

These things the President of the United States has deemed it his right, as Commander-in-Chief of the armies of the United States, to demand at the hands of the States which have been defeated in their attempt to separate themselves from the Union, as the condition of relaxing the bonds of military authority over them and restoring to them again the control of their local State affairs. He made these the conditions upon which they would be allowed, so far as his rightful authority extended, to resume the practical exercise of their functions as members of the Union, which had been suspended by their rebellion. He has done this in the exercise of his lawful authority as Commander-in-Chief of the Army of the United States, and was therefore responsible for the complete suppression of the rebellion and the restoration of peace, order, and loyalty in the regions where they have been for a time disturbed and overthrown. He has done it through agents, exercising a delegated

and just authority—acting on his behalf and in his name—just as his military generals prescribed the terms and conditions of the rebel surrender in the field; and the fact that these concessions have been granted affords at least a fair presumption that those who make them intend hereafter in good faith to abide by all the obligations and fulfill all the duties imposed by the Constitution and laws of the United States. It may possibly be wise for us to dismiss all these concessions and all these guaranties given by eight million people, and sanctioned by the most solemn forms of legislation, as utterly worthless and insincere. But that is a matter upon which each individual must exercise his own discretion upon his own responsibility.

Mr. Chairman, I am here to act with those who seek to complete the restoration of the Union, as I have acted with those through the last four years who have sought to maintain its integrity and prevent its destruction. For myself I shall endeavor to act upon this whole question in the broad and liberal temper which its importance demands. We are not conducting a controversy in a court of law. We are not seeking to enforce a remedy for private wrongs, nor to revenge or retaliate private griefs. We have great communities of men, permanent interests of great States, to deal with, and we are bound to deal with them in a large and liberal spirit. It may be for the welfare of this nation that we shall cherish toward the millions of our people lately in rebellion feelings of hatred and distrust; that we shall nurse the bitterness their infamous treason has naturally and justly engendered, and make that the basis of our future dealings with them. Possibly we may best teach them the lessons of liberty by visiting upon them the worst excesses of despotism. Possibly they may best learn to practice justice toward others, to admire and emulate our republican institutions, by suffering at our hands the absolute rule we denounce in others. It may be best for us and for them that we discard in all our dealings with them all the obligations and requirements of the Constitution, and assert as the only law for them the unrestrained will of conquerors and masters.

I confess I do not sympathize with the sentiments or the opinions which would dictate such a course. I would exact of them all needed and all just guaranties for their future loyalty to the Constitution and laws of the United States. I would exact from them, or impose upon them through the constitutional legislation of Congress and by enlarging and extending, if necessary, the scope and powers of the Freedmen's Bureau, proper care and protection for the helpless and friendless freedmen, so

lately their slaves. I would exercise a rigid scrutiny into the character and loyalty of the men whom they may send to Congress, before I allowed them to participate in the high prerogative of legislating for the nation. But I would seek to allay rather than stimulate the animosities and hatred, however just they may be, to which the war has given rise. But for our own sake as well as for theirs I would not visit upon them a policy of confiscation which has been discarded in the policy and practical conduct of every civilized nation on the face of the globe.

I believe it important for us as well as for them that we should cultivate friendly relations with them, that we should seek the promotion of their interests as part and parcel of our own. We have been their enemies in war, in peace let us show ourselves their friends. Now that slavery has been destroyed—that prolific source of all our alienations, all our hatreds, and all our disasters—there is nothing longer to make us foes. They have the same interests, the same hopes, the same aspirations that we have. They are one with us; we must share their sufferings and they will share our advancing prosperity. They have been punished as no community was ever punished before for the treason they have committed. I trust, sir, the day will come ere long when all traces of this great conflict will be effaced, except those which mark the blessings that follow in its train.

I hope and believe that we shall soon see the day when the people of the Southern States will show us, by evidences that we cannot mistake, that they have returned, in all sincerity and good faith, to their allegiance to the Union; that they intend to join henceforth with us in promoting its prosperity, in defending the banner of its glory, and in fighting the battles of democratic freedom, not only here, but wherever the issue may be forced upon our acceptance. I rejoice with heartfelt satisfaction that we have in these seats of power—in the executive department and in these halls of Congress—men who will coöperate for the attainment of these great and beneficent ends. I trust they will act with wisdom; I know they will act from no other motives than those of patriotism and love of their fellow-men.

Mr. Jenckes.—When the gentleman from New York says, looking at the question of reconstruction, that there resides in the Executive power to impose conditions upon the resumption of the rights of the States which have been in rebellion, I ask him where he finds that power—in the Constitution of the

United States or in the public law, the law of war, the law of nations which overrides when it is once called into existence? Is it the power of carrying on foreign war or suppressing domestic insurrections?

The day's session came to a close with Mr. Jenckes' question unanswered.

On January 5 Rufus P. Spalding [O.], a representative of what was probably the most radical section in the Union, the "Western Reserve," stated what conditions of reconstruction of the States lately in rebellion would be satisfactory to his constituency. These were:

1. Qualified right of suffrage in the District of Columbia;
2. Amendment of the Constitution excluding negroes from being counted in making up the ratio of the representation in Congress except in States granting them the suffrage;
3. Constitutional amendment prohibiting nullification and secession;
4. Constitutional amendment prohibiting repudiation of the national debt and assumption of the rebel debt;
5. Constitutional amendment denying admission to Congress of former rebels.

On January 8 George R. Latham [W. Va.] gave a border State view of the subject.

Who questioned the right of the loyal people of these [border] States to reëstablish their governments in their respective capitals when they recovered the power to do so? And where is the difference in the principle involved in the condition of these States and of those yet unrepresented upon this floor? Those yet unrepresented were a while wholly instead of partially overrun, and were longer under rebel control; but are the rights of loyal citizens destroyed by "the law's delay," or by the inability of the Government to which they bear allegiance to extend to them, for a time, its protection and support? In what, then, consists the difference in principle, except it be in the single fact that in the one class ordinances of secession (so called) were adopted and in the other were not?

Sir, those who accord to those ordinances an importance so essential and vital as this are, in my humble opinion, not one whit less disunionists in theory and principle than those who

adopted them. But we are seriously told upon the floor of this House, by those claiming to be *par excellence* the friends of the Union, that these States are out of the Union! Look, sir, and count the stars and stripes upon that flag. Does this House indorse a flaunting lie in its presence every day, hour, and minute of its sitting? Why floats in the breeze that banner untorn from the top of this hall, attracting the gaze of admiring multitudes for miles around, if eleven of the States represented thereon have ceased to be States and are no longer members of this Union? Is it to deceive foreign nations through their representatives at your Government? Go, sir, and ask the honest tar in your navy yard, or upon the wide ocean, or in a foreign port, if the flag floating from his masthead flaunts a lie—is a deception and a cheat! Ask the returning veteran, scarred and maimed, who risked his life and shed his blood to save and perpetuate the Union, if "the war has been a failure," and if the flag he bears so proudly homeward is all that is saved from the wreck of his dismembered country! Sir, I leave the reply to your imagination; and I would not envy the gentleman who champions this doctrine the pleasure of a tour over this country, charged with the duty of cutting the representatives of eleven States from that flag which has become a household god in every loyal family throughout the land.

To restore these State governments, then, is, in my opinion, to reinstate them as they existed when overthrown by the rebellion, subject only to such changes as are necessary to conform them to the present status of the National Government. During the suspension of the proper practical relations between the people of these States and the National Government the institution of African slavery has been abolished, and upon resuming these relations they are now required to conform their organic law to this very important change, not because their State constitutions are not republican in form without this change, but because the Constitution and laws of the United States are supreme, and those of the several States must conform to them.

Mr. Latham was in favor of admitting representatives to Congress from the States to be reconstructed on two guaranties alone:

1. Taking the oath of allegiance; and
2. Ability of the constituency of these representatives to maintain a loyal civil government without military aid.

Samuel Shellabarger [O.] specifically answered the speech of Mr. Raymond. Says Mr. Blaine, he spoke with care and preparation, as was his habit. He wasted no words, but in clear, crisp sentences subjected the whole question to the rigid test of logic.

I shall inquire whether the Constitution deals with States. I shall discuss the question whether an organized rebellion against a government is an organized State in that government; whether that which cannot become a State until all its officers have sworn to support the Constitution remains a State after they have all sworn to overthrow that Constitution. If I find it does continue to be a State after that, then I shall strive to ascertain whether it will so continue to be a government—a State—after, by means of universal treason, it has ceased to have any constitution, laws, legislatures, courts, or citizens in it.

If, in debating this question, I debate axioms, my apology is that there are no other questions to debate in reconstruction. If, in the discussion, I make self-evident things obscure or incomprehensible, my defence shall be that I am conforming to the usages of Congress. I will not inquire whether any subject of this Government, by reason of the revolt, passed from under its sovereignty or ceased to owe it allegiance; nor shall I inquire whether any territory passed from under that jurisdiction, because I know of no one who thinks that any of these things did occur. I shall not consider whether, by the rebellion, any State lost its territorial character or its defined boundaries or subdivisions, for I know of no one who would obliterate these geographical qualities of the States. These questions, however much discussed, are in no practical sense before Congress.

What is before Congress? I at once define and affirm it in a single sentence. It is, under our Constitution, possible to, and the late rebellion did in fact, so overthrow and usurp, in the insurrectionary States, the loyal State governments as that, during such usurpation, such States and their people ceased to have any of the rights or powers of government as States of this Union, and this loss of the rights and powers of government was such that the United States may, and ought to, assume and exercise local powers of the lost State governments, and may control the readmission of such States to their powers of government in this Union, subject to and in accordance with the obligation to guarantee to each State a republican form of government.

Upon the broad proposition thus laid down Mr. Shellabarger proceeded to submit an argument, which, for closeness, compactness, consistency and strength, says Mr. Blaine, has rarely, if ever, been surpassed in the Congress of the United States. Other speeches have gained greater celebrity, but it may well be doubted whether any speech in the House of Representatives ever made a more enduring impression or exerted greater convincing power upon the minds of those to whom it was addressed. It was a far more valuable exposition of the reconstruction question than that given by Mr. Stevens. It was absolutely without acrimony, it contained no harsh word, it made no personal reflection; but the whole duty of the United States, and the whole power of the United States to do its duty, were set forth with absolute precision of logic. The reconstruction debate continued for a long time and many able speeches were contributed to it. While much of value was added to that which Mr. Shellabarger had stated, no position taken by him was ever shaken.

Mr. Shellabarger first discussed

WHAT, BY THE LAW OF NATIONS, IS A STATE?

Upon this point he said:

At the very foundation of this discussion lies the question, what make up the necessary elements of every State in this Union? What properties are they which, if any one be lost by a State, it ceases to be entitled to exercise the powers and demand the rights of a political and governing member of that Union?

The argument I now derive from "public law" is really identical with the one I shall next adduce, and shall base upon the express terms of the Constitution. In this argument—assuming, as I do, two axioms of our law; first, that the law of nations is part of your Constitution (Const., art. 1, sec. 8, clause 10), and, second, that such Constitution is to *its* States, at least, as much "supreme law" as the international code is law to the civilized states which are under its sway—I here only show that these law-defying communities in rebellion cannot be "States," unless our Union has lowered and debased the world's "legal idea" of a "state."

What, then, is required to constitute a state by the law of nations?

We answer:

1. "A fixed abode and definite territory belonging to the people who occupy it." (Wheaton, 33.)

2. "A society of men united together for the purpose of promoting their mutual safety and advantage by their combined strength." (*Ib.*, 32.)

3. "The legal idea of a State necessarily implies that of habitual obedience of its members to those in whom the superiority is vested." (*Ib.*, 33.)

This third necessary element of a state is the only important one in this discussion. Hence, I add the following high authorities:

Grotius (Book 3, chapter 3, section 2) says:

"The law, especially that of nations, is in the state as the soul is in that of the human body, *for that being taken away it ceases to be a state.*"

Burlamaqui (Volume 2, page 25), in defining a state, says:

"It is a multitude of people united together by a common interest and common laws, *to which they submit with one accord.*"

I might add to these all the writers on public law for centuries, in confirmation of what is self-evident without proof, that there can be no state where the people do not habitually obey the laws. For four hundred years the unanimous conscience and common sense of the civilized world have refused to recognize the existence of a people who were habitually disobedient to their own laws or the law of nations. Such a people is blotted out.

Can it be that for four centuries the united conscience and judgment of the civilized world shall prohibit the existence upon the earth of such a monster as a state whose people are habitually lawless, and then shall it be left for our "more perfect Union" to establish "States" which, although they cannot *commence* their existence until every officer and minister of that State shall swear to support the Constitution of the United States, as the supreme law of the land, yet shall *continue* to be States after every officer of such State had discarded such oath, and every inhabitant had, for years, defied and discarded these "supreme laws"?

In the lights of the public law of the world let this Congress answer the startling question whether an organized rebellion has come to be an organized "State"; whether "habitual" treason has come to be "habitual obedience to law"; and whether the legal "idea of a state" has come to be a synonym for chaos, in which are commingled, in unalleviated political ruin, the absolute overthrow of all its "supreme laws," the wreck of all loyal constitutions, laws, and forms of government, and the death or exile of every inhabitant who admitted the existence of such loyal State!

Surely, Mr. Chairman, it is not too much to say that even under the settled precepts of public law those eleven districts, called "Confederate States," ceased to be States. In them, during so many dark years, there was no obedience to law except the law which compelled the defiance of all "supreme laws"; there was no government except that one which consisted in enforcing disloyalty to government; there was no observance of the "law of nations," unless that is to be found in indiscriminate and remorseless assassination or murder of every loyal man whom their treason could reach either by means of the dagger, the torpedo, the poisoned food, the bandit, the violations of truce, or the systematized destruction of prisoners of war. Their body-politic was one gigantic treason, made up of eleven organized rebellions, combined into one by the force of a relentless military despotism.

But, sir, the unexampled magnitude of these interests involved impels me on to what are, if possible, more conclusive arguments. I go from the public law to the Constitution.

WHAT IS A STATE OF THIS UNION?

That which is required to be added to the properties which belong to every state, in the sense of the international law, in order to constitute a State of our Union, is—

1. Its citizens must owe, acknowledge, and render supreme and habitual allegiance and obedience to the Constitution, laws, and treaties of the United States in all Federal matters, these being the supreme laws to the States and their citizens. (Constitution, article 6.)

2. All "the members of the State legislatures and its executive and judicial officers shall be bound by oath or affirmation to support the Constitution" of the United States. (Article 6.)

3. That the United States shall have so "admitted it into this Union" (article 5, section 3) as to have assumed "to guar-

antee to it a republican form of government, and to protect it against invasion, and," on application, "against domestic violence."

4. And by such recognition and "admission into this Union" to have secured to it, as a body-politic, or "State," certain rights of participation in the control of the Federal Government; which rights I shall name hereafter. (See also 1 Bishop on "Criminal Law," sections 128 to 137, inclusive.)

No one who can read the Constitution will deny that each State in this Union must have every one of these properties before it can *commence* to exist in the Union; because the Constitution so declares. Now, the question I consider is whether it shall *continue* to be a State, in the sense that it holds the powers and rights of a State, after it has lost every property which it must have before it could *commence* to exist in the Union.

DOES THE CONSTITUTION DEAL WITH STATES?

The gentleman from New York [Mr. Raymond] says:

"The Constitution does not deal with States except in one or two instances, as the election of members of Congress and the election of electors of President and Vice-President."

This statement involves an error both of fact and law which, considering its highly intelligent and patriotic source, is amazing. Now, sir, reading English will correct this error. Turn to the Constitution. It deals with States, in the way of imposing restraints and obligations upon them as States, in the following matters: regulating commerce among the States; requiring Representatives, also United States Senators, to reside in their respective States; prohibiting States from entering into any treaty, alliance, or confederation, coining money, emitting bills of credit, making anything but gold and silver coin a tender for debt; passing any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; from taxing imports or exports without consent of Congress; from laying tonnage duty; from keeping troops or ships of war in time of peace; from entering into any compact with another State or foreign power; from engaging in war unless invaded or in imminent danger thereof; from refusing to give full faith to records, etc., of other States; from refusing to surrender fugitives from justice or labor; in requiring States to be tried in the courts of the United States; requiring all their officers to take an oath to support the Constitution; requiring them to

pay State's proportion of direct taxes; in prohibiting "either" State from conferring any other emolument upon the President than his salary; in requiring them to furnish, at command of the President, their militia; and in subordinating their "judges," "constitutions," and "laws" to the Constitution, laws, and treaties of the United States as "the supreme law of the land."

It secures rights and confers powers upon the States as States in each of the following respects. It secures to each the right to elect at least one Representative, to elect two Senators, to cast one vote in ratifying constitutional amendments, and in calling a convention to make such amendments; to cast one vote in electing a President in the House, to appoint in such manner as the legislature thereof may direct electors to elect a President and Vice-President, to fill by appointment vacancies in Congress, to demand that "in the regulation of commerce no preference shall be given to the ports of one State over those of another," in securing equal immunities to their respective citizens, in having guaranteed to them republican governments, in being protected against insurrection and domestic violence, in securing them from being divided, etc., and in enabling them to define the qualification of electors for United States officers by fixing that of the most numerous branch of the State legislatures.

My object, Mr. Chairman, in reciting these fifty or more supremely important provisions of the Constitution, in every one of which it is evident, both by the nature and express terms of the provisions themselves, and by the innumerable adjudications of the courts, that the Constitution "deals with" the States, as such, was not the frivolous one of showing that there were more than "one or two" of these. My purpose was the higher one of showing how baseless that argument was which was based upon the assertion that the Constitution did not deal with States, but individuals only, and that, therefore, not the States but only individuals could lose their rights under such Constitution. I wanted not only to show the argument baseless, but that its precise opposite is the exact truth. I wanted to show that the very body, soul, life, and essence of the Constitution are penetrated, pervaded, and characterized by and with this recognition of the States, and of their high powers as such. I wanted to bring into view the momentous and controlling fact which disposes of this high constitutional question, that the States are not only "dealt with" by the Constitution, but that their powers as States in our Government are abso-

lutely vital. And I *separated* the obligations and restraints imposed upon the States and their officers from the conferments of rights and powers upon them, that it might appear to all men and to the very children who can read their Constitution that, in this marvelous great scheme of government, as in every other wise human government, as well as in God's, the enforcements of obligation are coupled with and inseparable from the enjoyment of rights; that prescribed qualifications for the attainment of power must be possessed and proceed, and are inseparable, from the exercise of power. I wanted to show that there could be, under the Constitution, none of the rights or powers of a State where there were recognized none of the obligations or duties of a State.

Sir, how long may this nation survive with a Senate elected by rebel legislatures; or with treaties made by Senators chosen by rebel States; or with a President selected by electors chosen by the legislature of South Carolina; or with a President elected in a House of Representatives where each rebel State casts one vote; or with a House of Representatives elected by electors whom a rebel legislature would authorize to vote; or with officers over United States forces appointed by rebel governors; or with such constitutional amendments as would be ratified by rebel legislatures; or with a traitor for President whom you could remove only by the impeachment of a Senate elected by rebel legislatures; or with such foreign ministers and other officers of the United States as such a Senate would confirm; or with a prohibition upon your closing the ports of the eleven rebel States to a commerce supplying them with all the supplies of war, unless you also closed all the ports of the other States?

Sir, if the recital of these powers which the States, as such, hold in governing this Union does not prove that a State in rebellion, and whose government and people are in actual hostility to the United States, is not a component part of this Union, during the continuance of such rebellion, for the purpose of exercising *any* power, then such recital does prove other things. It proves that "Independence Hall" was a madhouse from the 14th of May to the 17th of September, 1787; and that the madmen there succeeded in devising a framework of government embodying in it a larger number of separate and fatal instruments of self-slaughter than was ever combined in a government before, or than was ever dreamed of by men who make Utopias, or by them who form governments in Bedlam.

CONGRESS HAS ASSUMED THAT REBEL STATES HAD NO RIGHTS AS STATES

I admit that the action of this Government was not, at all times during the war, harmonious nor consistent upon the matter of according rights to rebel districts. It would have been strange, indeed, if all such action, done, as it was, in the midst of the awful events of such wars, revolutions, and breakings up of the systems of governments, had been consistent upon any subject. Besides, as mere measures of war, there was constant temptation to err, if at all, in the direction of according to loyalty in the insurrectionary districts every possible protection and power, to the end that it might be developed into support of a Government staggering to its fall under the blows of treason.

But still the most solemn and deliberate action of your Government in all its departments, and recently all its actions, proceed upon the assumption that these rebel States had lost all the rights of States.

Among these acts may be mentioned those of July 13, 1861, and 30th of same month. These have been held to be acts "regulating commerce" (11 American Law Register, 419), and they close the ports of the rebel States to all commerce and capture their ships upon the seas. And yet, if these Southern ports were ports of States having the rights of States, you could not only not close them "in regulating commerce," but you could give no port any preference over them. Again, in every revenue and tariff act which you passed in regulating commerce and the revenue since the war began, you have not only "given preferences" against the Southern ports, but you have provided for their being totally shut to all commerce. Could you provide in a tariff bill that the ports of New York shall be open and those of Massachusetts closed?

These are only examples.

POSITION OF THE PRESIDENT

The President has assumed that the rebel States ceased to be States in the sense I am considering when the military power of the rebellion was extinct, and actual war was ended, and the necessity for resort to mere war powers and expedients ceased. It was then, he holds, that the laws and constitutions and powers of State governments of these States sprang into life and force if they were only put into abeyance by the war

and could all come back into life and force when the war was gone.

On the 29th of May, 1865, these old State constitutions had either come to be in force or they had not. If they were in force at all, then all their provisions were in force and binding, just as much as New York's constitution was; and could only be changed in the mode prescribed by themselves. Is it competent for the United States to order New York to call a convention and change her constitution? Is it competent for the United States to order it changed in a way in total disregard to the modes of amendment which it prescribes as the only ones by which it can be amended?

Now what has happened in these rebel States? Take one example as a specimen of all. On the 29th of May, 1865, President Johnson issued a proclamation appointing Holden provisional governor of North Carolina, and ordered him, under prescribed rules, to call a convention for "altering or amending the constitution of North Carolina," etc. But then that constitution of North Carolina prescribes how alone it can be altered. The convention ordered by the President is wholly unknown to and in violation of the old constitution; and if it was in force at all on the 29th of May, it could no more be altered in that way than the constitution of England could.

Precisely the same thing, in principle, has occurred in every rebel State except, perhaps, three. By presidential proclamations new governments have been professedly called into existence since the war was ended, and since the old constitutions and laws were revived out of abeyance, if they did revive. In every one the new constitutions and governments have been formed in almost total disregard of the provisions of the constitutions which they profess to amend. Now, it is exactly impossible to comprehend the action of the Executive except upon the assumption that these State constitutions and their governments had not revived *so as to control the methods of their own amendment.*

No, no, Mr. Chairman, the President himself tells the country, in the notable words of his proclamation, where it is that *he* deems that he gets this power to order States into existence. His words are, "Whereas the fourth section of the fourth article of the Constitution of the United States declares that the United States shall guarantee to every State in the Union a republican form of government, I, Andrew Johnson, President and Commander-in-chief," etc. Sir, here is an unmistakable avowal of the source of his power and of the cause that called that power

forth. If the old government and constitution of North Carolina had in fact come back to her out of the suspended animation which the rebellion had caused, then she on this 29th day of May already *had* a republican constitution—there was no occasion to alter the constitution to make it republican, nor need to guarantee such a form of government to her.

Sir, let me not be misunderstood. I am not pointing to these acts of the President as wrong, but to show that the President has dealt with this great question precisely in the view I maintain, to wit, that these old State governments were so effectually overthrown that they do not come into force at the end of the war so as to furnish the basis of republican governments to these States, and that it has become the business of the United States to guarantee such governments to hold them. *They* attack the President who hold that in these acts of the Executive, in creating new constitutions, he did so in violence and disregard of living constitutions and republican governments already there. I do not attack him. If, indeed, these old State constitutions had, on the 29th of May, 1865, resumed their sway over these States, as the new champions of the President in this House allege, then indeed has the man they champion, in disregarding and superseding these constitutions, become usurper. Well may the patriotic executive head of this nation repeat once more the chronic prayer which, in all ages, weak adulation has extorted from men in power, "Deliver me from my friends."

SUPREME COURT'S POSITION

But I go on. I now show that the third or judicial branch of the Government is, by solemn and unanimous judgments, twice repeated, committed, in principle, to the same exact conclusions.

But in presenting these high arguments—the judgments of the Supreme Court—let me make them at once serve the double end of making utterly conclusive and complete the position that a State may cease to have the governing rights of States by reason of rebellion, and of also answering what is urged so much as to the logical and practical consequences of that position.

An able statement of these objections has been laid on our table. Their effect is—

1. That it admits that a State may secede.

2. That, as a consequence of this, Jefferson Davis cannot be punished for treason any more than the Governor of Canada could be.

3. That if we admit the rebels "were to be regarded as

belligerents," then when we take them back we become liable for their debts.

4. That individuals and not the States forfeit their rights by treason.

In enforcing these objections my friend from New York [Mr. Raymond] says:

> "If they were out of the Union, when did they become so? They were once states in the Union. If they went out of the Union it was at some specific time and by some specific act."

Before the Supreme Court shall be made to answer, as it will, each one of these objections, permit me, Mr. Chairman, to allude to them; and first to this question about the "specific act," which the gentleman from New York [Mr. Raymond] asks. In respectfully answering his questions let me ask and answer some others of similar legal aspect.

I ask when and by what specific act does "tumult" become "war" in law? I answer, in the language of Chief Justice Marshall, when it, in fact, assumes "warlike array and strength." What in a civil war is the specific act and time which changes, in law, an "insurrectionary party" into a "belligerent"? I answer, in the language of the Supreme Court, when in fact "the regular course of justice is interrupted by revolt, rebellion, or insurrection, so that the courts of justice cannot be kept open." When, in law, does a revolt become civil war? I answer, in the language of Wheaton, when "the insurrection becomes, in fact, so strong as no longer to obey the sovereign, and to be able by war to make head against him." When, in law, and by what specific act, did the entire population of Virginia, including the loyal men, cease to be "friends," and become "enemies of the United States"? I answer, when, in fact, they became "belligerents."

The destruction and supersedure of all loyal government and law in South Carolina was a *fact*, not a law. It was this fearful "fact" which made her cease to be a State governing this Union, and not any ordinance of secession.

The distinguished gentleman to whom I have alluded states the fourth objection which I have named in these words:

> "The people of a State may, by treason, forfeit their rights, but in a legal point of view they have no power to affect the condition of a State in the Union."

That is, turned out of metaphysics into English, every inhabitant of a State may, by treason, come to have *no* political

rights or powers whatever as individuals except the right to be hung; but the same individuals, put into a bundle and called a body-politic or State, have *all* political rights and powers, and can govern this Union! Now, a plain man would have difficulty in being able to see a living, acting, ruling State where there was no constitution, court, or law, and where there were no inhabitants, all these having been hung for treason. Such a man would be dull enough to conclude that if you hung for treason all the people required to make up the body-politic called a State the State would at least be in affliction.

But, Mr. Chairman, it was unfortunate for this distinction between the political State and its people that it has repeatedly encountered the ordeal of the Supreme Court and has been utterly discarded by it.

In 3 Dallas, 93, that court says:

> "A distinction is taken at bar between a State and the people of a State. It is a distinction I am not capable of comprehending. By a State forming a republic (speaking of it as a moral person) I do not mean the legislature of the State, the executive of the State, or the judiciary, but all the citizens which compose the State, and are, if I may so express myself, integral parts of it, all together forming a body-politic."

Two years before the objections I have quoted were so ably uttered, they had been pressed, with learning, zeal, and ability equal to his, upon the consideration of the Supreme Court in the "Prize Cases," (2 Black, 635), and had been discarded unanimously by that court, nine judges sitting, including Taney. All the court agree that after the passage of the act of Congress of 13th July, 1861, recognizing the existence of the war, every inhabitant of the rebel States became "enemies" of the United States and "belligerents."

I affirm that the reasoning and judgment of this case settle and establish each one of the following propositions:

1. From the seventh paragraph of the Syllabus (page 636) I quote and affirm that the late "civil war between the United States and the so-called Confederate States," had "such character and magnitude as to give the United States the same rights and powers which they might exercise in the case of a foreign war."

2. From the ninth paragraph of the same Syllabus I quote and affirm that "*all* persons residing within the territory occupied by the hostile (rebel) party in this contest were liable to be *treated as enemies though not foreigners.*"

3. I affirm again, quoting from the opinion of the court

(page 673), that "it is a proposition never doubted that the belligerent party who claims to be sovereign *may exercise both belligerent and sovereign rights.*"

4. I affirm that precisely the same objections were urged in this case as those I have quoted; and were stated by the court in these words, "that insurrection is the act of individuals and not of the government or sovereignty," and "that the individuals engaged are the subjects of law," and "that secession ordinances are nullities and ineffectual to release any citizen from his allegiance."

To these objections the Supreme Court replies:

> "This argument rests on the assumption of two propositions, each of which is without foundation upon the established law of nations. It assumes that where a civil war exists the party belligerent claiming to be sovereign cannot, for some unknown reason, exercise the rights of belligerents, though the revolutionary party may."

Again the court replies to those objections in the following words, the court italicising the words:

> "In organizing this rebellion they have *acted as States* claiming to be sovereign over all persons and property."

In December, 1865, the ten judges (2 Wallace, 404) unanimously decided the same thing; that all the inhabitants, guilty and innocent, became belligerents and "enemies" of these United States.

The results of these two decisions are that these rebel States:

1. Acted *as States,* in organizing the rebellion.

2. That *all* their citizens, innocent and guilty, were thereby made "*enemies* of the United States."

3. That though they became "enemies" *that* did not make them "foreign" States so as that when we take them back we must pay their debts.

4. That, as the court decides that the United States may exercise over these people *both* "belligerent" and "sovereign" rights, therefore we may, as sovereign, try Davis for treason, although we did treat and hold these States as an "enemy's" country.

5. As these States became "enemies'" territory, and all persons residing within it became "enemies of the United States," they cannot at the same time have been a people having any political rights to govern in this Union, unless indeed this Union can be governed by a body of people, every one of whom

are held by its law to be the "public enemies of the United States."

HENRY C. DEMING [Ct.].—I would respectfully ask my friend from Ohio if he has any authorities, outside of those quoted in the prize cases, for the purpose of vindicating the position that the sovereign in a civil war may exercise both sovereign and belligerent rights?

MR. SHELLABARGER.—I have looked through the authorities on this subject, and in the modern and respectable authorities of the world I find no dissenting voice. The doctrine will be found not only in the text and notes of Wheaton, but in Vattel, in Ward, in Halleck, and Bello.

MR. DEMING.—I would ask my friend if he has looked over the notes in Lawrence's Wheaton for the purpose of seeing the conflicting authorities which Lawrence there quotes on this specific point; that is to say, in a civil war it is incompetent for the sovereign to exercise both civil and belligerent rights.

MR. SHELLABARGER.—I answer the gentleman that I have looked through those notes carefully and thoroughly, and that while, if my memory is not now at fault, I find some unimportant conflict of authority, I do not find any conflict that at all impairs the force of settled law as established in the prize cases.

Sir, it is a weak and inadequate statement of the truth to say that he mocks the law, offends the loyal sense of the people, and insults their common sense who affirms that that people or those States had any rights of government in this Union, every man, woman, and child of whom have been pronounced by two unanimous judgments of the Supreme Court of the Republic to be, in contemplation of the supreme law of the Republic and of the law of nations, the public enemies of the United States.

Does the gentleman [Mr. Raymond] yet ask for "the specific act" that deprived these States of all the rights of States, and made them "enemies"? I once more answer him in the words of the Supreme Court that the specific acts were, they causelessly waged against their own Government a "war which all the world acknowledge to have been the greatest civil war known in the history of the human race." That war was waged by these people "as States," and it went through long, dreary years. In it they threw off and defied the authority of your Constitution, laws, and Government; they obliterated from their State constitutions and laws every vestige of recognition of your Government; they discarded all official oaths, and took in their places oaths to support your enemy's government. They seized, in their States, all the nation's property; their Senators and

Representatives in your Congress insulted, bantered, defied, and then left you; they expelled from their land or assassinated every inhabitant of known loyalty; they betrayed and surrendered your armies; they passed sequestration and other acts in flagitious violation of the law of nations, making every citizen of the United States an alien enemy, and placing in the treasury of their rebellion all money and property due such citizens. They framed iniquity and universal murder into law. They besieged, for years, your capital, and sent your bleeding armies, in rout, back here upon the very sanctuaries of your national power. Their pirates burned your unarmed commerce upon every sea. They carved the bones of your unburied heroes into ornaments, and drank from goblets made out of their skulls. They poisoned your fountains, put mines under your soldiers' prisons; organized bands whose leaders were concealed in your homes, and whose commissions ordered the torch and yellow fever to be carried to your cities, and to your women and children. They planned one universal bonfire of the North from Lake Ontario to the Missouri. They murdered by systems of starvation and exposure sixty thousand of your sons, as brave and heroic as ever martyrs were. They destroyed in the five years of horrid war another army so large that it would reach almost around the globe in marching columns; and then to give to the infernal drama a fitting close, and to concentrate into one crime all that is criminal in crime, and all that is detestable in barbarism, they killed the President of the United States.

Mr. Chairman, I allude to these horrid events of the recent past not to revive frightful memories, or to bring back the impulses toward the perpetual severance of this people which they provoke. I allude to them to remind us how utter were the overthrow and obliteration of all government, divine and human; how total was the wreck of all constitutions and laws, political, civil, and international. I allude to them to condense their monstrous enormities of guilt into one crime, and to point the gentleman from New York [Mr. Raymond] to it, and to tell him that was "the specific act."

Now, Mr. Chairman, if the combined forces of the Constitution and the public law, the obvious dictates of reason, justice, and common sense, and these enforced by the approval of repeated and unanimous judgments of the Supreme Court can settle for our own Government any principle of its law, then it is established that organized rebellions are not "States," and that these eleven distinct political treasons, which they organized into one, and called it "the Confederate States," had *no*

powers or rights as States of this Union, nor had the people thereof.

RESTORATION OF THE STATES

If these States lost their powers and rights as States, by what authority and means are they restored? Is it accomplished by mere cessation of war and the determination of the rebel inhabitants to resume the powers of States; or is this Government entitled to take jurisdiction over the time and manner of their return?

I hold that the latter is the obvious truth.

Let it be admitted that these rebel districts may, without the assent of the United States, and without regard to the state of their loyalty, resume, at pleasure, all the powers of States—this Government having no jurisdiction to determine upon the question of their loyalty or the republican character of the new State governments—then we have this result.

There were, during the first years of the war, twenty-three rebel Senators, including Breckinridge and another. That was more than one-third of the Senate. These twenty-three in the Senate are enough to deprive the United States of all power ever to make a treaty, or to expel a member from the Senate, or to remove from office by impeachment a rebel Secretary of War like Floyd, or a rebel Secretary of the Treasury like Cobb, or a rebel United States judge like Humphreys, or an imbecile President who thought secession unconstitutional, and its prevention equally unconstitutional, like Buchanan. How long, sir, could your Government survive with such a Senate, one-third rebel? How long can you live deprived of these powers vital to every government? Not a week, sir.

But, Mr. Chairman, this is precisely what might have occurred at any day during this rebellion if cessation of war entitles the revolted States to resume the powers of States in defiance of the will of this Government; and it is precisely what may occur to-day if these States be indeed disloyal yet at heart. If, after exhausting "all the resources of war" for the overthrow of the Government, and failing, it is, indeed, competent for them to abandon these resources, and resort to "the resources of statesmanship," and resume at once the high powers of States in the Union, without the assent of such Government, then there has not been an hour since the rebellion began, and the hour is not now, in which this Government has not literally been in the power and at the mercy of the rebellion.

Is it replied to what has been said in regard to the power for

mischief of disloyal Senators in the case which I have stated, expel them? the reply is vain, because the same twenty-three who can prevent any impeachment or the formation of any treaty are also enough to prevent any expulsion under the Constitution.

Is it again replied, exclude these rebels from the Senate under the clause making each House the judge of the elections and qualifications of its members? the reply is obviously frivolous.

1. If under this clause you may exclude a Senator duly elected and qualified in every other respect and sense than that he comes from and is elected by disloyal States, then you yield the whole argument, and accord to this Government all the powers of self-preservation which I am insisting upon. The difference is that you find the power of self-protection under a clause by which each House is compelled to judge separately of the election and qualification of its members; and hence you occupy a position where you may have twenty-four States in the Union, in the Senate; thirty-four in the Union, in the House; and Heaven knows how many in the Union for electing a President.

2. If you reply, I will reject these twenty-three rebel Senators, not because their States can elect none, but because they are "rebels," in the case you put; the reply is vain. When Mason, Slidell, Davis, and Breckinridge last took their seats in your Senate, who knew, or could have proved, that they came there to embarrass and destroy your Government? Could either have been excluded from any known or ascertainable personal disqualification?

No, Mr. Chairman, there is no escape. If the United States has no power to decide, as a great and sovereign people acting through their Government, what shall be a "State" in her high Union, and cannot determine when, out of the wreck and ruin of old States, have been formed new republican States, based upon the only foundations upon which a republican State of this Union can be built, that of the general consent and loyalty of its people, then indeed is your Government not so much as "a rope of sand." It is a monster compelled by the organic law of its life to terminate that life by self-slaughter.

But, sir, such is not the law of its life. I have already shown that the President has discarded such conclusions. I now invoke the authority of the highest court of the Republic, and by that I show that it has decided this question also.

I state the effect of this decision in the language of a distinguished law author (see 1 Bishop, Crim. Law; sec. 133). He says:

"It has been settled by adjudication (7 Howard, 42 and 43) that it is for the President and the two Houses of Congress to decide whether a particular government within a State is republican or not; and to recognize it if it is, and to refuse to recognize it if it is not, and the adjudication of the matter by them is conclusive and binds the courts and the nation. It is not therefore for any class of persons in a State which has ceased to have a government to set up a government of their own."

If it is asked me now, granting your position that these States in revolt ceased to have any powers of government in the Union, still have not new ones been reorganized safe and fit to resume these high powers? I answer, sir, the question, "is it safe, and are they fit," are the stupendous *facts* now on trial by the American Congress. It was the whole end of the feeble argument which I have concluded to vindicate my Government's power to take jurisdiction of this inquest and to hold this trial.

But if I am demanded by what standard of fitness, and what guaranties for safety, Congress shall decide these great facts now on trial, it will serve all the purposes of this argument and this hour to reply that in the true and high sense and spirit of the memorable words of the President of the United States I find a fitting answer. He says:

"No State can be regarded as thoroughly organized, which has not adopted *irreversible guaranties* for the rights of the freedmen."

Mr. Chairman, let this noble utterance—*"irreversible guaranties for the rights" of American citizens of every race and condition*—be written with pen of iron and point of diamond in your Constitution. Let it thus be made "irreversible" indeed, by the action of the State, in the only way it can be made irreversible; and then, to establish this and every other guaranty of the Constitution upon the only sure foundation of a free republic—the equality of the people and of the States—make, by the same organic law, every elector in the Union absolutely equal in his right of representation in that renovated Union, and I am content.

Let the revolted States base their republican State governments upon a general and sincere loyalty of the people and come to us under the guaranties of this renewed Union, and we hail their coming and the hour that brings them.

If you ask again, "Suppose such general loyalty should never reappear, shall they be dependencies forever?"

Sir, convince me that the case is supposable, then with deepest sorrow I answer—*forever!*

On January 9 Daniel E. Voorhees [Ind.], an extreme State Rights Democrat, added to the embarrassment of the Administration in its campaign for Republican support by offering resolutions which praised the President's message as an "able, judicious and patriotic State paper" containing "the safest and most practicable" policy which "can be applied to our disordered domestic affairs," and which are also sound constitutionally, being based on the principle that "no State nor number of States confederated together can in any manner sunder their connection with the Federal Union."

The speaker repudiated the charge that the Democrats were supporting the President in order to secure the spoils of office which were at his disposal.

Our action will be independent, with no desire, like the adroit animal in the fable, to take advantage of the quarrel which now rages among the voters to snatch away the feast over which they are contending. For my part, as in the past, so in the future, I shall pursue what I conceive to be the right, indifferent alike to the allurements of reward or the terrors of reproach.

Mr. Voorhees charged that there was an organized conspiracy in the Republican party to play the part of Joab toward the President, saluting him with a kiss and the kindly salutation, "How is it with thee, my brother?" when their poniard's point was seeking a vital spot under the fifth rib.

He further stated that Thaddeus Stevens [Pa.] was the master spirit of this conspiracy, as shown by his instigation of the Special Committee of Fifteen, at whose head had been placed a man (Senator William P. Fessenden) "who asserts that the Union was destroyed by the war and that it remains so to this day."

By this movement, he said, we were asked to ravel to pieces all that the President had done to restore the Union.

The healing principles of the Constitution are, in my judgment, rapidly doing the needed work of restoration, and yet we are at this stage of the process asked to break again the once fractured limbs, to tear agape the half-closed wounds, and to

cause the whole land to bleed afresh. Sir, I shall stand by the physician who is working the cure, as against that blind and fatal empiricism which first pronounces the patient dead and then commences giving medicine.

Mr. Voorhees then attacked the Stevens theory that the States lately in rebellion were "dead States." He charged that the theory had the sinister and ulterior purpose of vengeance and revolutionary destruction.

Certain beasts of prey, we are told, prefer to find their quarry ready slain, in order to feast upon it in comfort and repose. And so the radical party of the country would find it easier far to make its unnatural banquet on the rights, privileges, laws, liberties, and property of the South by declaring at once that there is no living political community in all that wide region to exclaim against the enormity. Its reasoning on this point is that it is safer and less troublesome to rob a corpse than it is to pick the pockets of the living. This is the highwayman's doctrine of convenience, introduced here now as a party platform. It is more and worse. It is an assertion that the American Union itself is dead. While it claims that the Southern States have destroyed themselves, yet it admits that, like blind Samson of old, in their dying agonies they seized hold of the pillars and tore the temple in ruins to its very foundations, and that they in their desolation to-day are only a portion of the general wreck. It is notice to the world that the war to restore the Union was an utter failure—that the war is over and yet the Union is rent in twain.

In what attitude before the civilized nations does this pernicious heresy place the Federal Government? If we were waging war on an independent power, a separate existing nation, how was it that we refused all negotiations for peace except upon the basis of its utter annihilation? Wars between different civilized powers are made to repair injuries, to resent insults, or to reclaim rights which have been denied; but there is no law of nations which justifies one government, because of its superior strength, in inflicting obliteration and murder upon its inferior neighbor. This doctrine is one of barbarism, in which the law of force is the law of right. Much pathetic eloquence and many bitter tears have attested the world's sympathy with Poland, with Hungary, and with poor, poor Ireland, and maledictions attend upon their destroyers; but with what curses of indignation would an enlightened posterity and an impartial history

assail us for blotting out by sheer force of arms a nation of our own kindred, who simply desired to possess their own in peace and leave us to do the same!

Sir, in every aspect the theory which now controls the majority of this House is fraught with death and disgrace to the Republic. I turn from its contemplation to a more cheerful theme. I will contrast against it the conduct and principles of the Executive, for which, I think, he deserves well at the hands of his countrymen.

What was the wish, the hope, the prayer of every heart not fatally bent on mischief, not an enemy to the human race, when the last of the Southern forces laid down their arms? Was it that this bitter period of strife should be prolonged and the fires of hate and malice kept alive forever? Was it that at the close of such a hurricane, with the billows yet swelling in angry commotion around us, we were to start afresh upon the long voyage of political discovery and legislative piracy which the bold mariner from Pennsylvania [Mr. Stevens] and his radical followers now, like Viking robbers of the ancient seas, point out to us? Was it not rather that the vessel should be brought back and quietly and firmly anchored as nearly as possible at her old moorings? Was it not rather that the corner-stones, boundary lines, and landmarks of the fathers of the Republic should be traced out and restored? I here assert that when the President closed the temple of Janus, refused to go in search of new principles by which to administer the Government, and extended the hand of friendship and assistance to the crippled and bleeding, though living, yes, living States of the South, he met the demands of the popular will, and laid claims to the gratitude of the present and the future.

Mr. Voorhees denied that the President's appointment of the provisional State governors was an usurpation.

By his oath he must enforce the laws. He found States without legal officers and unable to move forward in the channel of their duties. A State of this Union when the Federal laws are no longer obstructed cannot be in passive abeyance. It is an integral part of the Federal body, and if the body be sound there can be no paralysis among its members—they must have vitality; and in the performance of his duty the President used the best means in his power to revive and restore their lawful functions.

The gentleman from Pennsylvania [Mr. Stevens] saw fit to announce that the position of the President in regard to the Southern States was "not an argument, but a mockery." I partly dissent. I think it is both. It is an unanswerable argument in behalf of the early and true principles of the Government, and it is also an overwhelming and consuming mockery of the bloody designs, avaricious hopes, and greedy expectations of all those who desired when the war was over to rule the people of the South without the restraint of law; to humiliate them with an iron rod; to confiscate their lands and buy them in at nominal prices; to change the proprietorship of the soil and drive into exile and destitution its present owners until a new population should take control and, by the aid of the enfranchised negro, plant a Puritan ascendency all over the South; who here now unfurl the banner of "territorial condition," because all these consequences follow its triumph. Sir, this class has been mocked, and God and angels and all good men rejoice in their confusion. Their ascendency in this land would create a pandemonium of discord and a carnival of all the dark and cruel spirits of hate and revenge for generations to come.

But, Mr. Speaker, allow me to inquire whether this opposition to the Executive is not a new discovery, an afterthought, manufactured for a special purpose on the part of those who adhered to and upheld the late administration of Mr. Lincoln in regard to the continued existence and vitality of the Southern States during the late rebellion. Are they not estopped from this assault? In more than a hundred ways and forms, by military orders, in his annual messages, instructions to our foreign ministers, in letters and speeches to his own countrymen, and especially by his numerous proclamations, the late Executive always and at all times recognized the enduring existence of all the States over which the American flag had ever floated.

The late chief of the great party of the North dealt with American States, the people whereof were in rebellion, and not with a foreign power subject to conquest; and if his memory is sacred to his followers, they should not insult it by pronouncing his policy a delusion and a mockery ere his untimely tomb is fairly closed.

Sir, I am aware that many on the opposite side of the chamber do not indorse the destructive theory of the gentleman from Pennsylvania, but who are nevertheless assisting to carry its results into practice. They deny his premises that the States are dead, but concur in his conclusion that they shall not be represented on this floor. To my mind their position is the worst of

all. They embrace a consequence without a cause. They have reached an end which has no beginning. They are standing on a structure which has no foundation. While the premises of the gentleman from Pennsylvania are unsound, yet his logic is true. But those who refuse to follow him and yet deny representation have neither premises nor logic. If the States are out of the Union of course their Representatives are strangers to us, but if they are in the Union what power can close these doors against them except the power of lawless, revolutionary force?

What madness is this which proposes to govern the people of eleven American States, States "included within this Union," without representation? Where on this side of the ocean has been found such a monstrous principle of government? Its adoption would carry us back to the days of King George, and as fatally subvert liberty as if Cornwallis had triumphed on the plains of Yorktown.

But the advocates of this doctrine say that this phase of absolute despotism is only to last for a season; that these States are to go unrepresented only for a few years until guaranties for the future are obtained. Guaranties for the future! This vague term is another political convenience like that of "dead States." Under it each innovator, dreamer, and revolutionist throughout the land can demand and require the fulfillment of all his fantastic desires against the South before he is willing to admit her Representatives. It is the cloak for every higher-law purpose now abroad in the public mind. It is a well-filled arsenal from which to shower confiscation, negro suffrage, reapportionment, proscription of persons, and every other missile of torture that was ever leveled at an unfortunate people.

Sir, I deny that to a State can be refused her representation for a single moment on such grounds. Peace and obedience to law are the only guaranties for the future which any government can justly require of its citizens. Where is the power in the Constitution whereby anything more can be demanded? It may be said that the President himself has required guaranties in his policy of restoration. Even if he did so, I do not understand that he proposed to make their refusal a pretext for violating the Constitution himself. But I have not regarded his advice to the South in the nature of this movement in Congress. On the great question of slavery I hold that the action of the Southern States in adopting the constitutional amendment has been wise and beneficent. The system was destroyed already by the force of arms and the operations of war, but it is better for the future dignity and history of the nation that a fact accom-

plished of the utmost magnitude should have the sanction of fundamental law. It was a vast step, too, toward a speedy restoration, and that alone is a powerful appeal in favor of the counsel of the Executive and the action of the South.

One other subject has been much canvassed under this new-coined phrase of guaranties for the future. The war debt incurred by the Southern States in their attempt to establish a confederacy has been shaken in the face of the Northern people to incite them to a policy of distrust and severity. Everybody well knows, of course, that it will never be paid. All history tells us that the debt of a defeated revolution is always lost. The government that contracted it is no more, and the ruined and exhausted people gladly turn their backs on the dead and melancholy past and look forward to the future with new hopes, new ties, and a new destiny. As to the victor in arms ever assuming such a debt, no instance is known in the annals of mankind, and such an idea is not respectable outside of an asylum for the insane. I regard, therefore, the war debt of the South as fit only for one use—the declamation of demagogues and the malign purposes of political agitators.

But again, as to the right of representation, immediate and without any other guaranty than obedience to the Constitution. In the reconstruction proclamation of the late Chief Magistrate, he clearly and explicitly asserts the right of any State, whose people were then in hostility to the general Government, to be represented in the Federal Congress, and announces that he will consider such fact as an evidence that neither the State nor its people are any longer in rebellion. Where then was the guaranty doctrine? It had not yet been born. We were then wooing and courting representation because it suited our purposes to do so. We are now repelling it for the same reason.

But it may be said that it is not within the province of the executive department of the Government to determine the question of representation in the legislative department. But has not Congress itself made a record on this subject which it cannot ignore and which the majority dare not face? Has it not officially, over and over again, in both branches, assumed the very position which it now seeks with such flagrant assurance to repudiate? The cry is now that we must look to Congress for our policy of restoration. This place has suddenly become a citadel of wisdom, power, and dominion. It is a city of refuge, where all the disappointed spoliators, insane anarchists, bloody Jacobins, promoters of vengeance, disturbers of the peace, self-constituted saints who imagine themselves in partnership with

the Almighty to assist Him in punishing the sins of the world, where law-breakers and revolutionists of every shade and color now flee to escape from the wise, successful, and constitutional policy of the President. "To your tents, O Israel!" was the ancient and legitimate cry of alarm. "Look to Congress, look to Congress!" now rings out on the air as a call to battle in behalf of chaos, disorder, and interminable woes. The populace of France, tossed in a tumultuous delirium of hate, drunken with blood, dethroning Deity and reverencing a harlot, shouted, "Look to the Assembly, look to the Assembly!" where the Mountain murdered the Girondists, and where Robespierre, Marat, and Saint Just planned, in the name of public virtue, the destruction of human life and of human society. But, sir, if we must "look to Congress," let me show the wistful gazers a picture of congressional action which will fill their hearts with dismay, and which Congress itself cannot to-day behold without feelings of humiliation and shame over its present position.

Was Tennessee destroyed or were her people entitled to no voice here because of her ordinance of secession? Sir, her name was called here during more than half the period of the war, and the representatives of her people answered to their names in both ends of the Capitol. The gentleman who in vain sought even a recognition of his own existence in this body when the present Congress was organized [Horace Maynard] was then here with the full sanction of the same political majority which now spurns him from the door of its caucus room, and drives him from the protection which the escutcheon of his glorious State, under the administration of law, affords its Representatives in Congress. Shall we now assert that at that time Tennessee was a portion of a foreign government? Shall we then as the next step of supreme absurdity declare the President of the United States himself an unnaturalized foreigner, a captive to our lance and spear, entitled doubtless to kind treatment, but in no sense a citizen of the United States, inasmuch as he never expatriated himself from the alien and hostile province of Tennessee, and never acknowledged himself subdued to the embraces of the Federal flag as the symbol of a separate nationality? I am prepared to hear even this miserable libel on American institutions asserted. Nothing is allowed to stand in the way of fanaticism. Its purposes are inexorable, and its devotees often deem themselves in truth and honesty the philosophers of their age; but Frederick the Great made a wise observation when he said, "If I wanted to ruin one of my provinces I would make over its government to the philosophers." Their theories

are always in advance of their times; and in practical sense and actual utility they meet neither the requirements of the past, present, or future. The philosophers of Congress at least contradict themselves at very short stages of progress, and give no evidence of either ability or consistency.

HENRY C. DEMING [Ct.].—Will my distinguished friend from Indiana [Mr. Voorhees] inform this House when he thinks the right to representation here from these States commenced? Did it commence at Antietam, at Gettysburg, or when did it commence?

MR. VOORHEES.—My answer is, "Peace and obedience to law are the only guaranties for the future which any government can require of its people." And when peace and obedience to law reign among any portion of the American people, I hold that they are entitled to representation here.

MR. DEMING.—Then I suppose it will be necessary for the gentleman to show that obedience to law exists at this time in the reclaimed territories?

MR. VOORHEES.—Undoubtedly. I think the President and General Grant have shown that fact.

But one step further in this congressional record. As if to settle forever the construction which should be placed upon the condition of the Southern States, and their right to representation, Congress enacted and the President approved a law on the 4th of March, 1862, which fixed the number of the House of Representatives from and after that date.

In order to obtain the number of two hundred and forty-one Representatives as contemplated by this law, every Southern State whose citizens were in revolt must have been represented according to her population. What more can I do than to make this statement? What argument could add to its binding force? If men will repudiate to-day what they did yesterday, if they refuse to be bound by their own principles declared in the solemn form of a law, if the highest precedents of their own official action fall without force upon their ears, then, indeed, they are beyond the power of reason and callous to the reproach and derision of the world.

John A. Bingham [O.] replied to Mr. Voorhees. He said that the theory of Mr. Voorhees was the one upon which the secessionists had proceeded in their unsuccessful attempt to destroy the Union, and the one which the "Peace Democrats" of the North had maintained dur-

ing the war, thereby aiding the secessionists. He denied the assertion of Mr. Voorhees that Andrew Johnson, then as Vice-President or now as President, upheld this theory.

In the very passage which the gentleman has read from the message the President has said that "the functions of the rebel States were suspended." Of course if the functions of a State are suspended the powers of the State cannot be exercised. That is the President's position; the very converse of it is the position of the gentleman who comes here to introduce general resolutions of commendation of the President's message!

Will the gentleman undertake by his mere platitudes to assert here that if by chance five thousand men in South Carolina, lately in insurrection, choose to be represented in convention, and in all things manifest a willingness to return to their allegiance to the Constitution and Government of the United States in good faith, it follows of necessity that the residue of unrepentant insurgents in that State, whose hands are red with the blood of their countrymen, have a right to representation on this floor, and that, too, as provided by the act of 1862, to which the gentleman referred, giving them six Representatives and two Senators? I want an answer. Who undertakes to assert any such thing, and who is to judge in this matter—the Congress or the President?

Mr. Voorhees.—Mr. Speaker, the easiest, and at the same time most absurd, mode of argument is to suppose absurd things. I just step back on the fact that General Grant has been down there, and did not find any such state of things. That is sufficient for my argument at this time. Now, when you find a case of only five thousand in the community willing to discharge their duties, we will consider that.

Mr. Bingham.—Well, the gentleman has given us about the stoutest reason for his argument, I suppose, that he could find. He stands behind the shadow of a mighty name. General Grant, I believe, was one day in the State of South Carolina, if at all, on that journey; I am not certain if he touched the borders of the State at all. The gentleman thereupon concludes that it is all right in South Carolina; General Grant did not undertake to say so. But the gentleman by his explanation concedes—and that is enough for my purpose—that the representatives of the people of the United States have some right to inquire.

The gentleman admits that he voted for the proposed amendment to the Constitution making it hereafter unconstitutional

to assume any part of the debt contracted in aid of the late rebellion, or of any debt which may hereafter be contracted in aid of any rebellion against the United States.

Well, sir, if the people of the United States are justified in taking that one security for the future, are they not also justified in taking such additional security for the future as will bring in all the hereafter peace and prosperity to the South as well as to the North, to the East as well as to the West?

Oh, sir, it ought to have occurred to the gentleman, when he was meditating his carefully prepared speech in commendation of the President, that there appeared in that same message of his an utterance which ought to attract the attention of this House, and the attention of the whole country, and that was when he reproduced the words which express the true intent and meaning of the Constitution of the United States. "Equal and exact justice to all men." That is the utterance of the President in his message, an utterance which the gentleman found it convenient to be quite oblivious of when he came to make up his words of commendation. According to the political creed of that party which proposes to take the President into its most holy and jealous keeping, there is only to be equal and exact justice secured to white men. [Laughter.] Yes, his party were for equal and exact justice to white men, uttering the horrid blasphemy all the while that this is a Government of white men.

I propose, with the help of this Congress and of the American people, that hereafter there shall not be any disregard of that essential guaranty of your Constitution in any State of the Union. And how? By simply adding an amendment to the Constitution to operate on all the States of this Union alike, giving to Congress the power to pass all laws necessary and proper to secure to all persons—which includes every citizen of every State—their equal personal rights; and if the tribunals of South Carolina will not respect the rights of the citizens of Massachusetts under the Constitution of their common country, I desire to see the Federal judiciary clothed with the power to take cognizance of the question, and assert those rights by solemn judgment, inflicting upon the offenders such penalties as will compel a decent respect for this guaranty to all the citizens of every State.

I undertake to say that the President of the United States will be found coöperating with the representatives of the people in their endeavor to introduce into the Constitution not that which will mar it, but that which will perfect it and enable the people hereafter to secure and reap for themselves and for their

posterity forever the great ends for which that Constitution was ordained.

I repel every insinuation or intimation, come from what quarter it may, that the representatives of the people have manifested thus far the slightest disposition to interfere with the prerogatives, if gentlemen please so to term the powers, of the Executive. I deny that the representatives of the people have taken any step indicating any such purpose, or any purpose to raise an issue or create a conflict between the President and Congress. But I may say, further, that if the day ever comes when the President of the United States finds in this House no other supporters than those who combined together at Chicago in 1864 to bury him where they hoped that even the hand of resurrection itself could never again find him, then God help the President and save him from his friends. [Applause.]

There are two parties to the reorganization of these rebel States. The President cannot constitute a State; Congress alone cannot constitute a State; nobody upon earth can constitute an organized, constitutional State of the Union but the people of the United States, and the people of the proposed State cooperating. If the people of South Carolina do their part rightly and well, to which end no enabling act is needed, as it is but the exercise of the right of petition, which is guaranteed by the Constitution, and which you can neither confer nor take away by law, it will only then remain for Congress, upon her presenting a complete organization, to admit her to her equal position as a State within the Union, with full power to exercise her restored functions and with full right to her equal representation in the Senate and House. The speedy restoration of every State to its equal position, as soon as it can be done safely for the Republic, is, I am sure, the purpose of this House and of the President.

Mr. Stevens.—I want to know whether at the time the so-called Confederate Government was a government in fact, was organized and performed all the functions of government, the laws then passed and the decrees then made are not binding upon the people of the rebellious States?

Mr. Bingham.—They may be if not in conflict with the laws of the United States, and that people choose to submit to them now that peace is restored. They are void under the Constitution of the United States, as against the rights of any citizen who did not assent to them. I doubt whether there can be found upon this floor a single man who will deliberately say, if the insurgent State of North Carolina, through her corrupt and

treasonable judiciary, had decreed for the use of the Southern Confederacy the confiscation of the property of that venerable man, Pettigrew, who clung to the Constitution and cherished the hope of restoration as he cherished the hope of a better life, that the United States had not the power to reverse that decree and restore that property.

If South Carolina all this while was a State, with all the powers of a State, within the Union, how can we reach any such case? My learned colleague [Gen. Rutherford B. Hayes] knows that the State of Ohio, when she legislates touching the transfer of real estate within her limits and among her citizens, and without impairing the obligation of contracts, is beyond the power of the Federal judiciary, and cannot be restrained therein by the Federal Government.

With the explanation I have given his words I see no occasion to take issue with the President upon the status of the States in rebellion, but admit that these States remained States through the conflict for Federal purposes; that means that the State lines remained, that the judicial districts remained intact, so that when the war ceased in those States the Government of the United States could administer justice in every one of those States, and try therein all persons for crimes against the United States therein committed. I do not feel disposed to admit, if a citizen of South Carolina were to-day to commit treason against the United States at Charleston, that he could not be there tried for his crime; nor if he committed his crime there last year that he could escape trial when arraigned, on the plea that the district of South Carolina, previously prescribed by the law of the United States, had ceased, either by his treason or by the treason of others, to be a judicial district within a State.

I never was of that class of persons who believed or assented to the position for a moment, and I do not know if there is anyone here who does, that all the people within the limits of that confederacy were alien enemies. According to the Constitution and laws of the United States Government, every man is responsible for his own crime, and not for the crimes of others. So that when the sovereignty of the country comes to be restored —in Virginia and the Carolinas—the judiciary of the United States are bound by their oaths to discriminate between those who contributed by the compulsion of the bayonet to the support of the rebellion and those who originated it and are the guilty perpetrators of the great wrong. There is a wide difference between Jefferson Davis, the leader of the revolt against the Union, who, to enter upon it, voluntarily broke his oath to

support the Constitution of his country, and that poor, poverty-stricken conscript who served the confederacy of traitors only because of compulsion, or to secure thereby his daily bread.

I have said enough, I think, on this subject to satisfy gentlemen that the President stands by the great body of this House touching the status of the States. They need reconstruction. Their functions are suspended. Something must be done to give them an equal place in the Union. That is what the President says and what the House says. Who shall judge whether that which it was essential to do has been done at all, and, if done, whether it has been done rightly? Who is to decide it? I say it, without waiting to quote authorities, that the loyal people of the loyal States, who saved the Union, and are represented on this floor, are the final judges upon that question, and from their decision there lies no appeal.

I propose to bring this whole question to an issue before the House by offering the following as a substitute for the resolution of the gentlemen from Indiana:

Resolved, That this House has an abiding confidence in the President, and that in the future, as in the past, he will coöperate with Congress in restoring to equal position and rights with the other States in the Union all the States lately in insurrection.

And on that I demand the previous question.

Mr. Stevens.—I ask the gentleman from Ohio [Mr. Bingham] to consent that this whole subject be referred to the Joint Committee on Reconstruction.

Mr. Bingham.—Very well, I will withdraw the call for the previous question, and will move that the resolution with my substitute be referred to the Joint Committee on Reconstruction. And upon that motion I demand the previous question.

The question was taken; and it was decided in the affirmative—yeas 107, nays 32.

Henry J. Raymond [N. Y.] and William A. Darling [N. Y.] were the only Republicans who voted with the Democrats in the negative. This vote was extremely significant. The Republican party as represented in the popular Chamber of Congress had refused almost unanimously to express their confidence in the President, who but little more than a year before had received their votes as Vice-President. The Administration, in its plan to receive Republican indorsement of its policy of re-

construction, had been utterly defeated. Henceforth the Republican party was to be the Opposition.

Mr. Raymond in particular was bitterly disappointed. Says Mr. Blaine:

Few members had ever entered the House with greater personal *prestige* or with stronger assurance of success. He had come with a high ambition—an ambition justified by his talent and training. He had come with the expectation of a congressional career as successful as that already achieved in his editorial life. But he met a defeat which hardly fell short of a disaster. He had made a good reply to Mr. Stevens, had indeed gained much credit by it, and when he returned home for the holidays he had reason to believe that he had made a brilliant beginning in the parliamentary field. But the speech of Mr. Shellabarger had destroyed his argument, and had given a rallying point for the Republicans, so incontestably strong as to hold the entire party in allegiance to principle rather than in allegiance to the Administration. If anything had been needed to complete Mr. Raymond's discomfiture after the speech of Mr. Shellabarger, it was supplied in the speech of Mr. Voorhees. He had been ranked among the most virulent opponents of Mr. Lincoln's Administration, had been bitterly denunciatory of the war policy of the Government, and was regarded as a leader of that section of the Democratic party to which the most odious epithets of disloyalty had been popularly applied. Mr. Raymond, in speaking of the defeat, always said that the Democrats had destroyed Johnson by their support, and that he could have effected a serious division in the ranks of Republican members if he could have had the benefit of the hostility of Mr. Voorhees and other anti-war Democrats.

Three weeks after Mr. Shellabarger's reply Mr. Raymond made a rejoinder. He struggled hard to recover the ground which he had obviously lost, but he did not succeed in changing his *status* in the House, or in securing recruits for the Administration from the ranks of his fellow Republicans. To fail in that was to fail in

every thing. That he made a clever speech was not denied, for every intellectual effort of Mr. Raymond exhibited cleverness. That he made the most of a weak cause, and to some extent influenced public opinion, must also be freely conceded. But his most partial friends were compelled to admit that he had absolutely failed to influence Republican action in Congress and had only succeeded in making himself an apparent ally of the Democratic party—a position in every way unwelcome and distasteful to Mr. Raymond. His closing speech was marked by many pointed interruptions from Mr. Shellabarger and was answered at some length by Mr. Stevens. But nothing beyond a few keen thrusts and parries and some sharp wit at Mr. Raymond's expense was added to the debate.

CHAPTER XI

The First Civil Rights Bill

Lyman Trumbull [Ill.] Introduces in the Senate Bill to Protect All Persons in the United States in Their Civil Rights—Debate in the Senate: Varying Views, by Sen. Trumbull, Peter G. Van Winkle [W. Va.], Willard Saulsbury [Del.], James Guthrie [Ky.], Edgar Cowan [Pa.], James H. Lane [Kan.], Jacob M. Howard [Mich.], Reverdy Johnson [Md.], Charles Sumner [Mass.], Thomas A. Hendricks [Ind.], Garrett Davis [Ky.], Daniel Clark [N. H.], William M. Stewart [Nev.], Lot M. Morrill [Me.], John B. Henderson [Mo.], James R. Doolittle [Wis.), Henry S. Lane [Ind.]; Bill Is Passed—Debate in the House: Varying Views by James F. Wilson [Ia.], Andrew J. Rogers [N. J.], M. Russell Thayer [Pa.], Charles A. Eldridge [Wis.], John A. Bingham [O.], Henry J. Raymond [N. Y.]; Bill Is Passed—The President's Veto—Debate in the Senate: Sen. Trumbull; Congress Passes Bill Over Veto.

ON the same day (January 5, 1866) that he introduced in the Senate the bill for the extension of the Freedmen's Bureau [see page 183] Lyman Trumbull [Ill.] introduced a bill "to protect all persons in the United States in their civil rights and furnish the means of their vindication."

As summarized by James G. Blaine in his "Twenty Years of Congress" the provisions of the bill were as follows:

It declared that "there shall be no discrimination in civil rights or immunities among the inhabitants of any State or Territory of the United States, on account of race, color, or previous condition of servitude; but the inhabitants of every race and color shall have the same right to make and enforce contracts, to sue, be parties, give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property, and to full and equal benefits of all laws and provisions for the security of personal property; and shall be subject to like punishment, fines and penalties, and none other—any law, statute, ordinance, regulation, or custom to the contrary notwithstanding."

Any person who under any law, statute, or regulation of any kind should attempt to violate the provisions of the act would be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year. Very stringent provisions were made, and a whole framework of administration devised, by which the rights conferred under this enactment could be enforced through "the judicial power of the United States." The district attorneys, marshals, deputy marshals of the United States, the commissioners appointed by the circuit and territorial courts of the United States, the officers and agents of the Freedmen's Bureau, and every other officer who was sufficiently empowered by the President of the United States were, by the act, specially authorized and required, at the expense of the United States, to institute proceedings against every person who should violate its provisions, and "cause him or them to be arrested and imprisoned for trial at such court of the United States or territorial court as, by the act, has cognizance of the case."

Civil Rights Bill

Senate, January 12-February 2, 1866

Senator Trumbull brought forward his bill on January 12, giving a clear exposition of its provisions.

It did not come up again until January 29, when Senator Trumbull proposed (lest the term "inhabitant" should be judicially construed to mean "citizen" in the narrow political sense and thus nullify the purpose of the bill) that the bill be amended so as to declare persons native to the United States, excluding Indians not taxed, "citizens." He said that the bill was next in importance to the Thirteenth Amendment abolishing slavery, of which measure, indeed, it was an essential complement, securing the freedom there declared.

There is very little importance in the general declaration of abstract truths and principles unless they can be carried into effect, unless the persons who are to be affected by them have some means of availing themselves of their benefits. Of what avail was the immortal declaration "that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness," and "that to secure these rights gov-

ernments are instituted among men," to the millions of the African race in this country who were ground down and degraded and subjected to a slavery more intolerable and cruel than the world ever before knew? Of what avail was it to the citizen of Massachusetts [Samuel Hoar], who, a few years ago, went to South Carolina to enforce a constitutional right in court, that the Constitution of the United States declared that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States? And of what avail will it now be that the Constitution of the United States has declared that slavery shall not exist, if in the late slaveholding States laws are to be enacted and enforced depriving persons of African descent of privileges which are essential to freemen?

It is the intention of this bill to secure those rights. The laws in the ex-slave States have made a distinction against persons of African descent on account of their color, whether free or slave.

Here the speaker discussed the "black codes" of several Southern States [see page 190 ss].

The purpose of the bill under consideration is to destroy all these discriminations, and to carry into effect the constitutional amendment.

Has Congress authority to give practical effect to the great declaration that slavery shall not exist in the United States? If it has not, then nothing has been accomplished by the adoption of the constitutional amendment. In my judgment, Congress has this authority. It is difficult, perhaps, to define accurately what slavery is and what liberty is. Liberty and slavery are opposite terms; one is opposed to the other. We know that in a civil government, in organized society, no such thing can exist as natural or absolute liberty.

Civil liberty, or the liberty which a person enjoys in society, is thus defined by Blackstone:

> "Civil liberty is no other than natural liberty, so far restrained by human laws, and no further, as is necessary and expedient for the general advantage of the public."

That is the liberty to which every citizen is entitled; that is the liberty which was intended to be secured by the Declaration of Independence and the Constitution of the United States originally, and more especially by the amendment which has recently been adopted; and in a note to Blackstone's Commentaries it is stated that—

"In this definition of civil liberty it ought to be understood, or rather expressed, that the restraints introduced by the law should be equal to all or as much so as the nature of things will admit."

Then, sir, I take it that any statute which is not equal to all, and which deprives any citizen of civil rights which are secured to other citizens, is an unjust encroachment upon his liberty; and is, in fact, a badge of servitude which, by the Constitution, is prohibited. We may, perhaps, arrive at a more correct definition of the term "citizen of the United States" by referring to that clause of the Constitution which declares that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." What rights are secured to the citizens of each State under that provision? Such fundamental rights as belong to every free person.

Here the speaker referred, in support of his contention, to Joseph Story's "Commentaries on the Constitution" and the decisions of the General Court of Maryland in the case of Campbell *vs.* Morris (3 Harris and McHenry, 535), of the Supreme Court of Massachusetts (Abbott *vs.* Bayley, 6 Pickering 92), and of the case of Corfield *vs.* Coryell (4 Washington's Circuit Court Reports, page 380).

The judge in the latter case, he said, went so far as to declare that a person who is a citizen in one State, if he goes to another, is entitled there to the elective franchise.

In my judgment, persons of African descent, born in the United States, are as much citizens as white persons who are born in the country, but it is competent for Congress to declare who are citizens.

PETER G. VAN WINKLE [W. Va.].—Where is the authority by law of Congress to make them citizens?

SENATOR TRUMBULL.—The Constitution of the United States confers upon Congress the right to provide uniform rules of naturalization.

SENATOR VAN WINKLE.—For the admission of foreigners.

SENATOR TRUMBULL.—Nothing is said about foreigners. More than once that Congress by general act has naturalized a whole people. There was an act of that kind in reference to the Stockbridge Indians, an act of that character making citizens of the United States of the people of Texas and the people of Florida.

Willard Saulsbury [Del.] considered the bill as one of the most dangerous ever introduced in Congress. If slavery could not be abolished without a constitutional amendment, how could anything less than another such amendment affect civil rights, over which the States had just as exclusive control as they had over slavery until the passage of the Thirteenth Amendment? The bill did not fall under the provisions of that amendment, since it referred to persons (free negroes) who were not affected by it. The bill, therefore, was wholly unconstitutional. The Republicans seemed to assume that any legislation was constitutional which would help the former slave.

I think the time for shedding tears over the poor slave has well-nigh passed in this country. The tears which the honest white people of this country have been made to shed from the oppressive acts of this Government in its various departments during the last four years call more loudly for my sympathies than those tears which have been shedding and dropping and dropping for the last twenty years in reference to the poor, oppressed slave—dropping from the eyes of strong-minded women and weak-minded men, until, becoming a mighty flood, they have swept away, in their resistless force, every trace of constitutional liberty in this country.

Senator Saulsbury denied the assertion of Senator Trumbull that the bill would have no political effect.

What are civil rights? What are the rights which you, I, or any citizen of this country enjoys? What is the basis, the foundation of them all? They are divisible into but two classes; one, those rights which we derive from nature, and the other those rights which we derive from government.

Here you use a generic term which in its most comprehensive signification includes every species of right that man can enjoy other than those the foundation of which rests exclusively in nature and in the law of nature.

The right to vote is not a natural right; I do not possess it by nature, I only possess it by virtue of law. It pertains to me as a citizen of my State; and pertaining to me as a citizen of my State, it is a civil right, and is a right of no other class or character.

But the bill also provides that the persons affected shall have "full and equal benefit of all laws and procedings for the security of person and property."

What is property? It has been judicially decided that the elective franchise is property. Leaving out the question of voting, however, as a question of property, is it not true that under our republican form and system of government the ballot is one of the modes of securing property, one of the means by which property is secured? Your bill gives to these persons every security for the protection of person and property which a white man has. One of the authorities which the Senator read decides that the second section of the fourth article of the Constitution, which says that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," entitles a citizen of one State removing into another to a right to vote after acquiring a legal residence in such State. Was it for this reason and to secure this right to negroes that the Senator amended his bill this morning by declaring that all persons of African descent born in the United States shall be citizens of the United States?

Mr. President, this bill not only proposes to assume control over the laws which shall govern title to estates, but also to determine the persons who shall be entitled to enjoy estates and property within the States, and if you can do this as to a portion of that property, any particular species of it, you can do so as to the whole; if you can regulate and govern in one particular, you can govern in reference to all the property and all the interests of the States. If you can determine who shall hold property in a State then you can enact laws for the protection of the owner in its possession. Then also you can determine who shall not hold property within a State. If you can say who shall sue or give evidence in the courts of a State, then you can determine who shall not sue or give evidence in such courts. Such an assumption of power on the part of Congress ought to arouse the people of the whole country to a sense of impending danger. Let them take warning in time. But, sir, this bill positively deprives the State of its police power of government. In my State for many years, and I presume there are similar laws in most of the Southern States, there has existed a law of the State based upon and founded in its police power, which declares that free negroes shall not have the possession of firearms or ammunition. This bill proposes to take away from the States this police power, so that if in any State of this Union at any time hereafter there shall be such a numerous body of

dangerous persons belonging to any distinct race as to endanger the peace of the State, and to cause the lives of its citizens to be subject to their violence, the State shall not have the power to disarm them without disarming the whole population. Is this within your constitutional power and authority? Where did you get it? Are the utterances which come to us from the highest judicial tribunal, which sits but a few feet off, of no account here? Are the declarations of those who assisted in framing this Constitution to be of no avail here? I suppose not, for I suppose it is a foregone conclusion that this measure, as one of a series of measures, is to be passed through this Congress regardless of all consequences. But the day that the President of the United States places his approval and signature to that Freedmen's Bureau bill and to this bill, he will have signed two acts more dangerous to the liberty of his countrymen, more disastrous to the citizens of this country, than all acts which have been passed from the foundation of the Government to this present hour; and, if we upon this side of the chamber manifest anxiety and interest in reference to these bills and the questions involved in them, it is because having known this population all our lives, knowing them in one hour of our infancy better than you gentlemen have known them all your lives, we feel compelled by a sense of duty, earnestly and importunately it may be, to appeal to the judgment of the American Senate, and to reach, if possible, the judgment of the great mass of the American people, and invoke their attention to the awful consequences involved in measures of this character. Sir, stop, stop; the mangled, bleeding body of the Constitution of your country lies in your path; you are treading upon its bleeding body when you pass these laws.

But, sir, let me call your attention for a moment to what are the powers of the States under the Federal Constitution, and what it is they do not and never did intend to surrender to the Federal Government.

"The Federalist" speaking on this subject says:

> "The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State."

I cite that to show that in the judgment of the men who made the Constitution all these powers embraced in your bill are reserved to the States and to the States exclusively, because certainly they concern the lives, liberties, and properties of the

people. In the case of Gibbons *vs.* Ogden, 9 Wheaton, 203, the court say, speaking of the police powers of a State:

"They form a portion of that immense mass of legislation which embraces everything within the territory of a State not surrendered to the general Government, all which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State."

The speaker also declared the judicial powers conferred on the Federal Government by the bill to exceed those granted in the Constitution, which extended only

"to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority."

Suppose that an action of ejectment is instituted in any State where free negroes are denied the right to testify, and suppose that action of ejectment is against a free negro. He wishes to prove that he has not been guilty of the trespass in ejectment, and he proposes to prove it by a negro, and the court say, "No; under the law of this State that negro is not a competent witness." In such a case as that, this bill authorizes the circuit or district court of the United States to take cognizance of that action of ejectment, and the State courts are excluded from its consideration. I ask, did that cause of action, the right of A, a citizen of the State of Maryland, to sue another person in an action of ejectment, arise under the Constitution of the United States? Did it arise under any law of Congress? Did it arise under any treaty? Certainly not. Yet you propose to take a case arising under one of these from the control of the State courts and give it to the district court of the United States. On what ground? Simply because the judge, in saying what evidence should go before the jury, says that the negro cannot testify.

Sir, there cannot be a case of chicken stealing in any State of this Union where freed negroes are not allowed to testify that can, if this bill is to be operative and in force, be determined in the State courts. All such cases will be subject to be removed into the Federal courts.

If such consequences as these are to result from such enactments as this—and I honestly believe they are, if it is to be operative—what becomes of the States of this Union? What becomes of the powers of the States? What becomes of the

rights of the States? Sir, they have not even the privilege of administering their criminal laws; they have not the privilege of saying who shall give evidence and who shall not in their own courts; they have not the privilege of saying who shall hold property and who shall not; they have not the power to protect their own citizens against murder, rape, arson, any crime that can be committed against them.

A Federal court hearing and determining a case of ejectment between persons of the same State, brought to recover possession of land in the State in which both parties reside and awarding a writ of possession! A Federal court hearing and determining a case of larceny, the larceny being committed by a free negro, and administering the criminal law of the State! Surely

> "Judgment has fled to brutish beasts
> And men have lost their reason."

How you gentlemen will like the infliction of this punishment when you come to my State, and one of these pet lambs with a black skin shall be indicted for larceny, and you deprive the State of the jurisdiction of trying it, and it is removed to the circuit court of the United States or the district court of the United States; how your Federal judge, if he be of the same opinions with you, will like to carry that law into execution! Do you know what our law does with them? It provides for whipping his bare back. We have a whipping post in our State, and I think it is the most efficient means I ever knew for the prevention of thieving. How the humane feelings of all New England would be shocked!

The sixth section provides very heavy penalties against any marshal or officer who shall disobey or refuse to perform any of the duties imposed by this act; and what is the power that it gives to these marshals? They may call in the *posse comitatus* or the bystanders, and they are all to be punished if they refuse to aid in making arrests. What did the honorable Senator say, and what did other honorable Senators say, when the Fugitive Slave Law gave the power to the marshals to summon persons to make an arrest? They were horrified. What was their language? "Is thy servant a dog that he should do this thing?" Verily, not only the negro is as good in law as the white man in your opinion of him, but he is much more favored and better protected.

The bill gives the power to commissioners of deputizing in writing whomsoever they please to make these arrests. And

what does it do besides? It gives that fellow so deputized five dollars for doing his dirty work. What will be the consequence? Arrests of innocent parties to pocket the fee. And when they come to sue for assault and false imprisonment you will not let the State hear the cause, but you remove it far from our residences and our homes into the district or circuit court of the United States!

But this is not all. The chairman of the Judiciary Committee is still fearful that his free American fellow citizens of African descent may suffer some deprivation of right or infliction of wrong that may not be summarily and adequately redressed. He is fearfully apprehensive that there is some white man that ought to be arrested who may escape, and hence he provides in his bill that the President shall be authorized to employ the land and naval forces the more efficiently to execute its provisions. Poor fugitive white man. If you shall escape the pursuing and avenging army commanded by the lieutenant-general of the armies of the United States and attempt to cross the briny deep, the navy, the entire navy, shall chase you from the sea. Sir, your whole army and navy will be inadequate to execute this unconstitutional law, if law this bill shall become.

Senator Van Winkle thought that the scope of the bill was wider than its framers realized.

It involves not only the negro race, but other inferior races that are now settling on our Pacific coast, and perhaps involves a future immigration to this country of which we have no conception, for a bill has been introduced at the other end of the Capitol to strike out the word "white" from the naturalization laws, so that we may expect to have an influx here of all sorts of people from all countries. I need not pause to say that this would be detrimental to the best interests of our country. I am willing to receive among us, and always have been, those from other countries who are calculated to make good citizens. I am not and never have been willing to receive, if the discrimination could be made, those whose mixture with our race, whether they are white or black, could only tend to the deterioration of the mass; and I avow myself now as opposed to the amendment which is now before the Senate.

I believe there are certain fundamental and eternal principles that lie at the foundation of society; and, if you make these people citizens of the United States, I should feel that they

were entitled to the right of suffrage, and to granting them this I am opposed.

I entertain what perhaps may be deemed peculiar ideas in reference to the condition of society. I do not believe one word of what the chairman of the Judiciary Committee read from Blackstone yesterday. I think it is mere twaddle. I cannot conceive of a state of nature such as is spoken of there. I know not of people entering into society. It is never done and never has been done. What I do think is this: I believe the constitution of society was given to man by the Creator at the time it was instituted, and that whatever conditions were imposed at that time are those to which men should endeavor to live up.

We hear a great deal about the sentence from the Declaration of Independence that "all men are created equal." I am willing to admit that all men are created equal, but how are they equal? Can a citizen of France, for instance, by coming into this country acquire all the rights of an American, unless he is naturalized? I believe that the division of men into separate communities and their living in society and association with their fellows, as they do, are both divine institutions, and that, consequently, the authors of the Declaration of Independence could have meant nothing more than that the rights of citizens of any community are equal to the rights of all other citizens of that community. Whenever all communities are conducted in accordance with these principles, these very conditions of their prosperous existence, then all mankind will be equal, each enjoying his equality in his own community, and not till then. Therefore, I assert that there is no right that could be exercised by any community of society more perfect than that of excluding from citizenship or membership those who were objectionable. I do not believe that a superior race is bound to receive among it those of an inferior race if the mingling of them can only tend to the detriment of the mass.

The mode in which it is proposed to effect the object of the bill is neither constitutional nor legal. I was mistaken yesterday in saying that the *language* of the Constitution expressly applied to the naturalization of foreigners; but I was not wrong in the conclusion that that clause was *intended* to apply to foreigners only. I would remind the chairman of the committee that the case he cited of the Stockbridge Indians was also the naturalization of foreigners; for we hold the Indian tribes to be *quasi*-foreign nations; we, at least, make treaties with them, which are confirmed by this body. The laws of naturalization as they stand require a notice to be given and a renunciation

of the allegiance to all foreign powers, and require that notice to be given two years before the application is made; but there is no provision of that sort in this proposition. Yet the Constitution requires that the laws of naturalization be *uniform.*

I should be very willing to have the question submitted in some form to the people of the United States, whether they desire to admit to citizenship this class of persons; and I do not confine it to the African race alone, but I include the races on the Pacific coast that I have already mentioned, and others to whom it is proposed to open the doors. I would like to see it tested by a fair vote of the people of the United States whether they are willing that these piebald races from every quarter shall come in and be citizens with them in this country, and enjoy the privileges which they are now enjoying as such citizens.

I refused to join the American party at the time of its first formation because I thought it discriminated between naturalized citizens and native citizens. However much I might disapprove of the naturalization law previously to that time, I felt that, while these people were admitted under the law, they were entitled to all the rights and privileges and the same treatment as other citizens; and if these dusky people shall also be admitted to the rights of citizenship in such a way as I believe contains a fair expression of the people, and is according to the Constitution, I pledge myself to treat them in the same way that I was disposed to treat our naturalized citizens.

THE PRESIDING OFFICER.—The question is on the amendment proposed by the Senator from Illinois.

SENATOR TRUMBULL.—No action having been taken upon that amendment, I desire to withdraw it and to offer another in lieu of it to the same purport, changing the phraseology. I move to insert these words:

All persons born in the United States and not subject to any foreign power are hereby declared to be citizens of the United States, without distinction of color.

SENATOR JAMES GUTHRIE [Ky.].—I will ask the Senator if he intends by that amendment to naturalize all the Indians of the United States?

SENATOR TRUMBULL.—Our dealings with the Indians not taxed are with them as foreigners, as separate nations. I think that it would be desirable that the bill should apply to the Indians who are domesticated and pay taxes and live in civilized society.

EDGAR COWAN [Pa.].—I will ask whether it will not have the

effect of naturalizing the children of Chinese and gypsies born in this country?

SENATOR TRUMBULL.—Undoubtedly.

SENATOR COWAN.—Then I think it would be proper to hear the Senators from California on that question, because that population is now becoming very heavy upon the Pacific coast; and when we consider that it is in proximity to an empire containing four hundred million people, very much given to emigrating, very rapacious in their character, and very astute in their dealings, if they are to be made citizens and to enjoy political power in California, then, sir, the day may not be very far distant when California, instead of belonging to the Indo-European race, may belong to the Mongolian, may belong to the Chinese; because it certainly would not be difficult for that empire, with her resources, and with the means she has, to throw a population upon California and the mining districts of that country that would overwhelm our race and wrest from them the dominion of that country.

SENATOR TRUMBULL.—I should like to inquire of my friend from Pennsylvania if the children of Chinese now born in this country are not citizens?

SENATOR COWAN.—I think not.

SENATOR TRUMBULL.—I understand that under the naturalization laws the children who are born here of parents who have not been naturalized are citizens. Is not the child born in this country of German parents a citizen?

SENATOR COWAN.—The honorable Senator assumes that which is not the fact. The children of German parents are citizens; but Germans are not Chinese.

SENATOR TRUMBULL.—The law makes no such distinction; and the child of an Asiatic is just as much a citizen as the child of a European.

JAMES H. LANE [Kan.].—Most of the Indians of our State have taken an allotment of lands, and our Supreme Court have decided that, by the act of accepting the allotments, they have separated themselves from their tribal relations; yet we do not extend to them the right of citizenship.

SENATOR COWAN.—Mr. President, I am asked, with quite an air of certainty on the part of the chairman of the Judiciary Committee, whether the children of persons of barbarian races, born in this country, are not from that very fact citizens of this country. I am not prepared upon the moment to furnish authorities upon this point; but I am certainly very clear that in Pennsylvania that is not the law, and never has been the

law; and to assert that it is the law, in my judgment, is to betray an utter want of comprehension, an utter inappreciation of the fundamental principles which underlie the whole of our system. Who was it that established this Government? They were people who brought here the charter of their liberties with them; they were the freemen who emigrated to this country and established these governments, and they established them under charters legally granted them by the Crown of Great Britain originally. By the terms of the charters they were the actual possessors of the political power of the colonies, and they alone had the right to say whom they would admit to a coënjoyment of that power with them. It is true that the colonists of this country, when they came here and established their governments, did open the door of these privileges wide to men of their own race from Europe. They opened it to the Irishman, they opened it to the German, they opened it to the Scandinavian races of the North. But where did they open it to the barbarian races of Asia or of Africa? Nowhere. There may be no positive prohibition; but the courts always administered the law upon the basis that it was only the freemen who established this Government and those whom the freemen admitted with them to an enjoyment of political power that were entitled to it.

The identical question came up in my State—the question whether the negro was a citizen, and whether he possessed political power in that State—and it was there decided that he was not one of the original corporators, that he was not one of the freemen who originally possessed political power, and that they had never, by any enactment or by any act of theirs, admitted him into a participation of that power, except so far as to tax him for the support of Government. And, Mr. President, I think it a most important question, and particularly a most important question for the Pacific coast, and those States which lie upon it, as to whether this door shall now be thrown open to the Asiatic population. If it be, there is an end to republican government there, because it is very well ascertained that those people have no appreciation of that form of government; it seems to be obnoxious to their very nature; they seem to be incapable either of understanding it or of carrying it out; and I cannot consent to say that California, or Oregon, or Colorado, or Nevada, or any of those States shall be given over to an irruption of Chinese. I, for my part, protest against it.

Senator Trumbull.—Does the Senator deny that the Federal Government has authority to naturalize any person; that it

may provide by uniform laws of naturalization to naturalize any foreigner?

SENATOR COWAN.—Yes. But I would ask the honorable Senator whether there is not every distinction in the world between the right of a man after naturalization and before. These statutes do not provide that a naturalized citizen shall not have all the rights of every other citizen, but provide what his rights shall be before naturalization, so that the power which the United States originally had has nothing to do with the question.

SENATOR TRUMBULL.—I was looking at it as a question of power. Whether it would be politic to do it is another question.

SENATOR COWAN.—Mr. President, that is neither here nor there; this is not an amendment to the Constitution of the United States; this is an attempt to do without any power that which it might be very questionable whether we ought to do even if we had the power.

I may state that I have another objection to this bill at the present time; and that is that the people of several States in the Union are not represented here, and yet this law is mainly to operate upon those people. I think it would be at least decent, respectful, if we desire to maintain and support this Government on the broad foundation upon which it was laid, namely, the consent of the governed, that we should wait, at any rate, until the people upon whom it is to operate have a voice in these halls.

I know it is said that those people are not in condition to be allowed representation here. Mr. President, he who says the people are not in condition asserts that this Government is a failure. It rests entirely upon the people, and if the people cannot be intrusted anywhere and everywhere throughout it, then it is not the Government we supposed it was, and not the Government it was intended to be. I admit that the American people, like other peoples, are subject to periodical disturbances. They may be led away by the arts of the demagogues, they may be forced away by the power of *de facto* governments asserted over them; but if they are the punishment they receive is war. When the question is put, it is put to the arbitrament of the sword. That enters judgment and issues execution at the same stroke; and when the war is over the people are purged. When the war is over it is too late to say that the people are guilty. They have suffered the penalty of their folly, or their crime, or what you may be pleased to call it, and it is time then to talk about individuals, not people.

During the rebellion, it was questioned whether after the

war was over and after we had suppressed the rebellion the people would come back again to their allegiance and be part and parcel of the Union as before. Have they not done it? The result is a thing of which every American who loves his country and who prides himself in this great Republic should be proud of. If the Southern people, after their armies were beaten, after they had lost everything in this game of war, had refused to organize republican governments in unison with the Constitution and the laws, if they had still stubbornly refused to submit, if they had refused to send Representatives to Congress and Senators here, then you might have said that the people were in default and that the people had failed; but in my judgment those people have not failed; they have done, so far as I can observe, everything that the most hopeful or sanguine man could have expected them to do. I am afraid that we confound with the people of the South another and entirely different class. Unquestionably there are individual traitors there, and I would a great deal rather see them indicted and punished than hear so much about the "people."

Who are rebels and traitors? Who are guilty men according to the theory of our law? The presumption is that all men are innocent until they are shown to be guilty. Every line of our law is blazing with the light of that humane sentiment. The words "traitor" and "rebel" are exceedingly glib upon the tongues of certain gentlemen. A few minutes ago, it was alleged here that every man who cannot take the present test oath must necessarily be a rebel or a traitor. Mr. President, if that delusion is persisted in, if that belief is to govern in the councils of this Government, there is an end of the Republic. It is not true in fact, and it is not true in law.

Do gentlemen pretend that single men, without an organization, without any governmental means, without any of the insignia of power, can stand up and resist the government of a State with all these means in its hands of enforcing its power? Surely not; and there was no other power in this Government except the United States to which the loyal men in the South could look, and the United States went out of possession and left those people to the mercy of secession.

Mr. President, for two hundred years at least the doctrine has been established, and established beyond question, that protection and allegiance are reciprocal. I owe allegiance to this Government, and it owes to me protection. If it refuses to protect me, I am not to be punished because I do not yield it allegiance. Let me suppose a delegation of Georgians, of Ala-

bamians, or Mississippians, if you please, Union men, coming here to this capital in the winter of 1860-61, and calling upon Congress, and saying, "South Carolina has actually seceded; other States are about doing the same thing; you should appropriate money and provide means, you should authorize the President to put down that attempted rebellion." What did Congress say? Read the record. They would not trust the President. Then the delegation go to President Buchanan, and what does he say? "I cannot coerce a State; I might suppress an insurrection, but I have no means; I have no authority to call out the militia."

What were these people to do? Just exactly what they did do. They went back and told their people. "There is no help from the United States; they are out of possession; the President is recalcitrant, and Congress is wrangling and refusing to trust him; we cannot have help; we must submit."

I refer to a chapter in Mr. Greeley's book, "The American Conflict," as proof that there were more than one-half of the men of the South who were opposed to secession. What I object to is that half should now be branded as criminals when the only thing criminal they did was to get into difficulty and into war, desolation, and destruction, because we, the Government of the United States, did not do our duty in their behalf.

Now, I come to the law: if the general Government allows itself to be put out of possession, so that it cannot protect a citizen, and a *de facto* government is over him, whatever he does in obedience to that *de facto* government, and under its authority, is not treason.

A word as to the proper mode of treating these people. I asked a Southern gentleman the other day, "Suppose we get into difficulty with England or France, which side would they take?" "Why," said he, "nine out of every ten of them will stand by the flag." Now, Mr. President, that is either true or it is not true. If it is true that nine men out of every ten will stand by the flag, then I say to assail them as rebels and traitors, and to treat them as criminals, and to try to deprive them of the rights they ought to have as inhabitants of free States, as we are, is a gross outrage and one which will recoil upon our heads. If they are not; if they are in the condition which some gentlemen like to represent them as occupying, then, sir, I want to know whether you will bring them to reason, whether you will bring them back to that affection which they ought to have for this Government and its flag by such bills as this, which invade rights that they of all other people have been taught

to consider as peculiarly belonging to the States and not within the province of the Government to invade. Can you bring them back by making laws which operate upon them when they are not here? Can you bring them back by giving them the same cause to rebel against you which Great Britain gave to your ancestors? Can you bring them back here by legislating for them and yet refusing them the right of representation? Can you bring them back by amending the Constitution time and again over their heads when you refuse to listen to their arguments here in the common councils of the country?

Mr. President, I know apprehensions are expressed. Apprehensions of what? What can the people of those States do if we treat them fairly and give them all their rights under the laws? What is the worst they can do? Can they rebel again? If they are going to rebel again, you are putting them now exactly in such a condition that they will before the world have good cause. You are putting them precisely in that situation when they can appeal to your enemies for assistance, and when they will get it. When they ask England to protect them the next time, and then when they seek an alliance with France the next time, they will succeed. England will not pay fifty millions more to keep her Lancashire poor from starving when she can control the cotton fields of the Southern portion of these United States. France will not much longer be bullied about the Monroe Doctrine, when she, by joining with the South, may help to tear this Republic in two and shear it of its greatness.

Then, I say, if the people would stand by the flag, give them their rights; and, I say, if they will not stand by it, let us give them their rights and let them do their worst, because they will do it anyway. It is far safer to treat them according to the laws that exist and do now exist without new ones to operate upon them, made while they are not here, far safer than the course we are pursuing. Are there no courts, are there no juries, is there no machinery in the land by which individuals can be punished, and only machinery by which the innocent, the people, can be tortured and worried, and perhaps driven into another rebellion?

Mr. President, I hope we shall take better counsel. I think it cannot be disguised that just at this moment there is a growing apprehension in the country that something is not right. The soldier is beginning to ask why the country is not restored. He says, "I fought the battles of the country long days and dreary nights through a terrible war for the Union for the purpose of saving the Republic one and indivisible. Why is it

not restored?'' Is there any resistance to this Government, any refusal on the part of the people to put all the machinery in motion? I tell you, Mr. President, when he asks this Congress why it is that all the bands are not tied, and all the means of cementing it are not made use of, there will be a terrible answer from him if he finds that we by our factious course prevent this restoration.

What is it that binds now, I ask, the eleven States lately in rebellion to this Union but the President? He is the only piece of property they have in common with us. He stands like a Colossus across this chasm which it is our business to fill up and close forever. The bondholder, the man who loaned us the money to carry on this war, the man who came up with Fortunatus' purse, almost without stint, to furnish the sinews of it, will begin to ask, why is the Union not restored; where is the obstacle, and what is the obstacle? Will it do to tell him that the hearts of that people are not right? He will tell you that you had better leave that to the means of Christian grace; it will be enough for him if they obey the laws, if they are willing to submit themselves to the laws as other good citizens do. It will not do to assert to him that they are not to be trusted as the people, because he will tell you it was as the people and upon the faith that they as the people would restore the Government that he gave his money. It will not do either to tell him and the soldier, too, that we are going to hold these people as conquered provinces. The soldier will tell you that that will do him no good; he did not fight for conquered provinces; he did not fight to make his fellowmen vassals and serfs; he fought to bring them back to brotherhood and freedom. He wanted to make them to strengthen him and to aid him rather than to be his enemies hereafter.

Jacob M. Howard [Mich.] insisted that the Civil Rights bill was a necessary and constitutional corollary of the Thirteenth Amendment. Without it the freedman would possess nothing but his ''naked person,'' and even the liberty of this might be coerced by hunger on the one hand and legislative limitation, both as to kind of employment and wages, on the other.

There is no invasion of the legitimate rights of the States. The bill contemplates nothing of the kind; but it simply gives to persons who are of different races or colors the same civil

rights. I sincerely trust that this nation, having by an expenditure of blood and treasure unexampled in the history of the human race, set the slaves in the United States forever free, having employed this class of persons to the number of nearly two hundred thousand in the prosecution of our just and righteous war, will not now be found so recreant to duty, so wanting in simple justice, as to turn our backs upon the race and say to them, "We set you free, but beyond this we give you no protection; we allow you again to be reduced to slavery by your old masters, because it is the right of the State which has enslaved you for two hundred years thus to do." Sir, let me tell you and the Senators who have advocated the opposite side of this question that, if we fail in this high duty, if we fail to redeem this solemn pledge which we have given to the slave, to the world, and in the presence of Almighty God, the time is not far distant when we shall reap the fruits of our treachery and imbecility in woes which we have not yet witnessed, in terrors of which even the Civil War that has just passed has furnished no example.

Reverdy Johnson [Md.] thought that the purpose of the bill could be attained legally only by a constitutional amendment, since the Supreme Court in the Dred Scott case had held that negroes were not citizens under the Constitution, although it did not so discriminate against any other race. The bill, therefore, was in derogation of State powers which were perfectly constitutional, such as the discrimination in civic rights between aliens and citizens, the police power, marriage laws, etc.

He asserted that Indians were citizens of the United States; therefore, he said, they would come under the provisions of the act.

The Indian tribes upon that portion of the American continent that belonged to Great Britain were always subject to the dominion of England. England could have done what she thought proper to do with them, but all she did in the execution of that, her sovereign right, was to prohibit them from entering into any contracts in relation to their lands with any other nation than England or the dependencies of England. When we obtained our independence the whole authority that England had over the tribes became vested in the United States; and since then the uniform view that has been taken of the relation

in which these Indians stand to the United States is that they are but the wards of the United States. They have no sovereign power whatever; they are not a nation in the general acceptation of that term; they cannot sell their lands without the authority of the United States; they are not at liberty to sell their lands to anybody but to citizens of the United States, and under such regulations as the United States may impose.

If the honorable member will refresh his memory by consulting the case of Worcester *vs.* The State of Georgia, reported in 6 Peters, I think he will find that Mr. Chief Justice Marshall, who gave the opinion of the court, deciding that the legislation of Georgia or the acts of Georgia were unconstitutional, admits that the Government of the United States could do with the Indians, as far as the question of power was concerned, just what it thought proper; that the absolute dominion was in the United States; the possessory title, with a *quasi*-dominion, was with the Indians, but that *quasi*-dominion was only that they could sell their lands and were not subject to be taxed by the United States, but only because the United States themselves had agreed that they should have those rights; but it was not pretended in that case that they were not citizens of the United States. The result, therefore, would be that an Indian child, born within the territorial limits of these tribes, would be a citizen of the United States because the territory is part of the United States. Nobody ever doubted that the whole of the Indians who are subject to our control are now located upon territory belonging to the United States, and the result would necessarily follow, so far as citizenship depends upon birth, that, if you make it depend upon birth, the child who is born within the territorial limits of the United States, whether that portion be or be not within the temporary or partial control of the Indians, would be a citizen of the United States.

CHARLES SUMNER [Mass.].—Allow me to ask the Senator whether we do not always deal with the Indians through the treaty-making power?

SENATOR JOHNSON.—We have done so, but not necessarily.

SENATOR SUMNER.—Is it not the habit?

SENATOR JOHNSON.—Certainly it is; but I am dealing with it now as a question of power. We have dealt with them as a treaty-making power, but it is not because there ever was a doubt that Congress could deal with them by legislation; and, in point of fact, although we have dealt with them as a treaty-making power, we have done so by making them make the

treaty. It is no treaty-making power in the ordinary acceptation of the term; that is to say, the parties are not equal.

SENATOR SUMNER.—With the Senator's permission, I will remind him that we act upon our treaties with the Indians in this Chamber with precisely the same forms than we do upon our treaties with the European powers, and they must be ratified by a vote of two-thirds of this body.

SENATOR JOHNSON.—I understand that; but what I mean to say is, and I do not think the honorable member will contradict me, that there is nothing in the Constitution of the United States defining the treaty-making power, or in any other branch of it, which says that Congress cannot legislate in regard to them.

On June 31 Thomas A. Hendricks [Ind.] opposed the bill. He said that the inclusion of Indians who were taxed, and the exclusion of those who were not, was an invidious distinction. He did not want to see property introduced into the law as a requisite for citizenship.

Senator Trumbull replied that the Constitution had already drawn the line in its provision for apportioning *representation in Congress* and direct taxes.

Garrett Davis [Ky.] opposed the bill. It and the Freedmen's Bureau bill were, like the Siamese twins, connected with the same umbilical cord, the recognition of negroes as citizens, which, if severed, would cause their dissolution. This cord he proposed to cut. Repeating many previous arguments against this vital principle he introduced a new one. If emancipation gave citizenship, then the slaves emancipated by the Northern States after the Revolution were citizens. Were they or their posterity so recognized? No. Would the Southern States have agreed to the Constitution if they thought that under it negroes would be recognized as citizens? No. If negroes are now citizens, why pass a law declaring them such?

Senator Trumbull denied the facts as stated by Senator Davis and quoted to the contrary the fourth article of the Confederation and its ratification by all the Southern States but two. Indeed, North Carolina at one time permitted free negroes who were taxpayers to vote.

The Senator from Kentucky says, if they are already citi-

zens by the Constitution, why do you declare it in a law? We often pass laws to remove doubts, and I should like to remove the doubt even from the mind of the Senator from Kentucky, if that were possible.

Senator Davis replied:

The mere right to vote does not amount to citizenship. Citizenship, under the Constitution, is something different from what it was before the Constitution was formed. Before the Constitution was formed every State made its own citizens; every State coined its own money. Since the formation of the Constitution there is but one power to coin money, there is but one power to make citizens, and that is the Government of the United States. The State of Illinois admitted unnaturalized foreigners who had been resident in that State six months to vote. Did the fact that Illinois permitted an unnaturalized foreigner who had been resident there six months to take part in her government make him a citizen of the United States? Not at all.

My position is that this is a white man's Government. It was made so at the beginning. The charters that were granted by the different sovereigns of England to the various colonies were granted to white men and included nobody but white men. They did not include Indians. They did not include negroes. When the troubles with the mother country commenced in 1764, and culminated in revolution and a declaration of independence in 1776, all of that protracted and important transaction was by white men, and by white men alone. The negro had nothing to do with it, no more than the Indian; he was no party to it. It was not for his grievances that that struggle was made; it was not to reform his wrongs that that bloody war was waged; it was not to establish a government in which he was to be a party or a power that the Declaration of Independence was enunciated to the world and the old Articles of Confederation formed; it was not to make him a party to our present Government that the Constitution was formed. He was no party in the convention; he was not represented in the convention which framed the present Constitution. It is a white man's government. I say that the negro is not a citizen. He may be made a citizen by power, but it will be in disregard of principle.

Daniel Clark [N. H.] took issue with Senator Davis.

Before the Constitution was adopted the free black man in my State was just as much a citizen as the white man; and when delegates were chosen to the convention which adopted the Constitution he had a right to vote, and undoubtedly did vote, as well as the white man.[1] They formed that Constitution. In that Constitution there is nothing declaring that a negro shall be a citizen of the United States, and there is nothing declaring that a white man shall be. They stand on the same foundation. There is nothing declaring that the black man shall not be a citizen, nothing declaring any distinction between him and a white man.

And I may say, by the way, that slavery was never recognized by law in New Hampshire.

SENATOR DAVIS.—Have slaves not been bought and sold there?

SENATOR CLARK.—Yes; in one instance, at least, that I know of; but I have looked and can find no law that ever recognized a slave, nor any that set one free.

SENATOR DAVIS.—There is no law in Kentucky declaring horses property, yet they are so recognized. How did you people sell negroes?

SENATOR CLARK.—Very much as a man steals a horse.

SENATOR DAVIS.—Your people stole a negro and sold him?

SENATOR CLARK.—I believe my people are like other people, and, if they did steal and sell a negro, they did a great wrong to the negro. No matter where slavery exists, be it in New Hampshire or Kentucky, it is a violence and a wrong. [Applause in the galleries.] I want to find why a negro is not a citizen, if the gentleman will tell me. If he will lay down his definition, I want to see whether the negro did not comply with it and conform to it so as to be a citizen.

SENATOR DAVIS.—Government is a political partnership. No persons but the partners who formed the partnership are parties to the government. Here is a government formed by the white man alone. The negro was excluded from the formation of our political co-partnership; he had nothing to do with it; he had nothing to do in its formation.

WILLIAM M. STEWART [Nev.].—Allow me to ask a question. Is it a close corporation, so that new partners cannot be added?

SENATOR DAVIS.—Yes, sir; it is a close white corporation. You may bring all of Europe, but none of Asia and none of Africa, into our partnership.

SENATOR CLARK.—Let us see, Mr. President, how that may

[1] As a matter of fact they did so vote not only in New Hampshire but in other States.

be. Take the gentleman's own ground that government is a partnership, and those who did not enter into it and take an active part in it cannot be citizens. Is a woman a citizen under our Constitution?

SENATOR DAVIS.—Not to vote.

SENATOR CLARK.—I did not ask about voting. The gentleman said a while ago that voting did not constitute citizenship. I want to know if she is a citizen. Can she not sue and be sued, contract and exercise the rights of a citizen?

SENATOR DAVIS.—So can a free negro.

SENATOR CLARK.—Then if a free negro can do all that, why is he not a citizen except that the Dred Scott decision says that——

SENATOR DAVIS.—Because he is no part of the governing power.

SENATOR CLARK.—I deny that, because in some of the States he is a part of the governing power. The Senator only begs the question; it only comes back to this, that a nigger is a nigger. [Laughter.]

SENATOR DAVIS.—That is the whole of it. [Laughter.]

SENATOR CLARK.—That is the whole of the gentleman's logic. [Laughter.]

SENATOR JOHNSON.—Mr. President, but for the decision in the Dred Scott case, to which allusion has been made, perhaps the question would be free from all difficulty; but, as the Senate are already informed, the decision in that case was that, because of the particular condition of the African, neither he nor any of his descendants were citizens. The Senate will find, by referring to that decision, that the court put it entirely upon the ground that the Africans were imported into the United States as slaves, and bought and sold as property, and, according to the view that the court took, all their descendants partook of that condition; that is to say, they inherited the disqualification of the ancestor. The sins of the ancestor, if they could be called sins, were visited upon the children. They applied that principle by saying that the disqualification of the ancestor because of his condition was to be visited upon the children. It is very obvious, upon the reading of that opinion, that the court would have come to a different conclusion, provided the Africans had immigrated to the United States as immigrants, instead of coming here as property. If they had come as men and had not been brought in as chattels, then they would have been citizens of the United States. It is also evident that, if the Supreme Court had taken the view taken by

the honorable member who has just addressed the Senate [Mr. Clark], that there were in the States Africans or descendants of Africans at the time of the adoption of the Constitution who were citizens of the States in which they might be, they would have been citizens of the United States. That is obvious, as I think, from a paragraph in the opinion to which I invite the attention of the Senate, which will be found in 19 Howard, page 406.

The court say

"It is true that every person——"

Without reference to color, black or white——

"It is true that every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as citizens in the several States became also citizens of this new political body, but none other; it was formed by them, and for them and their posterity, but for no one else."

The error, therefore, that the court have committed, if they have committed an error at all, a question that I do not propose now to discuss, is not in the principle maintained by the honorable member from New Hampshire, but in the historical fact—were or were not negroes in the States of the United States citizens of such States, all or any one, at the time the Constitution was adopted?

But the Supreme Court have decided that negroes are not citizens, and the decision stands before us. Whether it will be recognized hereafter when the question arises in that tribunal at any subsequent time is a matter that I do not propose now to inquire into: there it is, and we have a right to suppose that it may control subsequent decisions; and, if it does control subsequent decisions, the result will be that this law will not be operative.

But does it follow that these negroes cannot be made citizens? That would be an extraordinary condition for the country to be in. Here are four million negroes. They are not foreigners, because they were born in the United States. They have no foreign allegiance to renounce, because they owed no foreign allegiance. Their allegiance, whatever it was, was an allegiance to the Government of the United States alone. They cannot come, therefore, under the naturalizing clause; they cannot come, of course, under the statutes passed in pursuance of the power conferred upon Congress by that clause; but does it

follow from that that you cannot make them citizens; that the Congress of the United States, vested with the whole legislative power belonging to the Government, having within the limits of the United States four million people anxious to become citizens, and when you are anxious to make them citizens, have no power to make them citizens? It seems to me that to state the question is to answer it.

SENATOR DAVIS.—Has the Government of the United States any power that is not conferred upon it by the Constitution?

SENATOR JOHNSON.—Certainly not.

SENATOR DAVIS.—Where is the power in the Constitution, or the provision in the Constitution, that gives the right to the Government of the United States to make a citizen of a native-born negro?

SENATOR JOHNSON.—I do not know that there is any particular clause that says the child of a native-born negro is to be a citizen, but it would be an extraordinary thing if under the judiciary clause it were not in the power of Congress to authorize a native-born negro, to use the language of my friend from Kentucky, to sue.

SENATOR DAVIS.—I reckon the language is good.

SENATOR JOHNSON.—I am not saying it is not good. I used it because I was sure it was good, as you used it. I would not have used it except upon your authority. [Laughter.]

SENATOR DAVIS.—You are getting modest.

SENATOR JOHNSON.—Now, Mr. President, if we can, by legislation, authorize the negro to sue, we are authorized to go one step at least toward making him a citizen. If we can authorize him to contract we take another step. If we authorize him to testify we take another step; and so to go on by assuming that we authorize him to do every other act that a white man can do, short of the right of voting, what is there in the Constitution which denies us the power to stop when we come to the exercise of that right? I can find nothing in the Constitution which leads to that result. It is a necessary, incidental function of a government that it should have authority to provide that the rights of everybody within its limits shall be protected, and protected alike. It would have been a disgrace to the members of the convention, in my judgment, if they had looked to the condition of things which now exists; or, without looking to that condition of things, if they had looked to the contingency sure to happen, and which was rapidly occurring at the time when the question became a matter of political agitation, that slavery would sooner or later be abolished by State legis-

lation or State action, and had denied to the Congress of the United States the authority to pass laws for the protection of all the rights incident to the condition of a free man.

SENATOR DAVIS.—I differ *toto cœlo* from the honorable Senator from Maryland upon this proposition. My opinion is that the Constitution of the United States never intended to place free negroes or slave negroes under the jurisdiction of the general Government at all; that the whole subject of free negroes and of slave negroes is left by the Federal Constitution, and was intended to be left by the Constitution, under the jurisdiction and exclusive control of the several States.

SENATOR STEWART.—Have we not a provision which is now a part of the Constitution which expressly provides that we may legislate on this subject?

SENATOR DAVIS.—That provision is revolutionary. Have Congress and the legislatures of the States the right to change our form of Government? Have they a right to establish a monarchy? Have they a right to establish a presidency for life? Have they a right to establish a Senate for lifetime, or a Senate that would transmit its honors and its offices to their posterity? Sir, the power to change the Constitution is a power simply to amend; it is not a power to revolutionize; it is not a power to subvert; it is not a power to change our form of government.

On Friday Lot M. Morrill [Me.] replied to the charge that the declaration of citizenship was revolutionary legislation.

If there is anything with which the American people are troubled, and if there is anything with which the American statesman is perplexed and vexed, it is what to do with the negro, how to define him, what he is in American law, and to what rights he is entitled. Hitherto we have said that he was a nondescript in our statutes; he had no *status;* he was ubiquitous; he was both man and thing; he was three-fifths of a person for representation and he was a thing for commerce and for use. In the highest sense, then, in which any definition can ever be held, this bill is important as a definition. It defines him to be a man and only a man in American politics and in American law; it puts him on the plane of manhood; it brings him within the pale of the Constitution. That is all it does as a definition, and there it leaves him.

It is not an enactment in the sense of the law. Everywhere where the principles of law have been recognized at all, birth

by its inherent energy and force gives citizenship. Therefore the founders of this Government made no provision—of course they made none—for the naturalization of natural-born citizens. Therefore, sir, this amendment, although it is a grand enunciation, although it is a lofty and sublime declaration, has no force or efficiency as an enactment. I hail it and accept it simply as a declaration.

But, sir, this amendment is important in another aspect. It marks an epoch in the history of this country, and from this time forward the legislation takes a fresh and a new departure. Sir, to-day is the only hour since this Government began when it was possible to have enacted it. Such has been the situation of politics in this country—nay, sir, such have been the provisions of the fundamental law of this country—that such legislation hitherto has never been possible. Although I have said that by the fundamental principles of American law all persons were entitled to be citizens by birth, we all know that there was an exceptional condition in the government of the country which provided for an exception to this general rule. So long as that provision in the Constitution which recognized this exceptional condition remained the fundamental law of the country, such a declaration as this would not have been legal, could not have been enacted by Congress. But the Thirteenth Amendment has destroyed slavery, this exceptional condition, and therefore the present declaration of the result of that destruction is in order.

The Senator from Kentucky denounces as a usurpation this measure, and particularly this amendment, this declaration. He says it is not within the principles of the Constitution. That it is extraordinary, I admit. There is no parallel, I have already said, for it in the history of this country; there is no parallel for it in the history of any country. The ancient republics were all exceptional in their liberty; they all had excepted classes, subjected classes, which were not the subject of government; and therefore they could not so legislate. But that it is extraordinary and without a parallel in the history of this Government or of any other does not affect the character of the declaration itself.

The Senator from Kentucky tells us that the proposition is revolutionary, and he thinks that is an objection. I admit that this species of legislation is absolutely revolutionary. But are we not in the midst of a civil and political revolution which has changed the fundamental principles of our Government in some respects? Sir, is it no revolution that you have changed

the entire system of servitude in this country? Is it no revolution that now you can no longer talk of two systems of civilization in this country? Four short years back I remember to have listened to eloquent speeches in this Chamber, in which we were told that there was a grand antagonism in our institutions; that there were two civilizations; that there was a civilization based on servitude, and that it was antagonistic to the free institutions of the country. Where is that? Gone forever. That result is a revolution grander and sublimer in its consequences than the world has witnessed hitherto.

But, sir, the Constitution even provides for revolutionizing itself. Nay, more, it contemplates it; contemplates that in the changing phases of life, civil and political, changes in the fundamental law will become necessary, and is it needful for me to advert to the events of the last four or five years to justify the declaration that revolution here is not only radical and thorough, but the result of the events of the last four years? Of course I mean to contend in all I say that the revolution of which I speak should be peaceful, as on the part of the Government here it has been peaceful. It grows out, to be sure, of an assault upon our institutions by those whose purpose it was to overthrow the Government; but on the part of the Government it has been peaceful, it has been within the forms of the Constitution; but it is a revolution nevertheless.

But the honorable Senator from Kentucky insists that it is a usurpation. Not so, sir. Although it is a revolution, radical, as I contend, it was not a usurpation, because it took place within the provisions contemplated in the Constitution. More than that, it was a change precisely in harmony with the general principles of the Government. The change which has been made has destroyed that which was exceptional in our institutions; and the action of the Government in regard to it was provoked by the enemies of the Government.

But, Mr. President, it is said that this amendment raises the general question of the antagonism of the races, which we are told is a well-established fact. It is said that no rational man, no intelligent legislator or statesman, should ever act without reference to that grand historical fact; and the Senator from Pennsylvania [Mr. Cowan] on a former occasion asserted that this Government, that American society, had been established here upon the principle of the exclusion, as he termed it, of the inferior and the barbarian races. Mr. President, I deny that proposition as a historical fact. There is nothing more inaccurate. No proposition could possibly be made here or any-

where else more inaccurate than to say that American society, either civil or political, was formed in the interest of any race or class. Sir, the history of the country does not bear out the statement of the honorable Senator from Pennsylvania. Was not America said to be the land of refuge? Has it not been since the earliest period held up as an asylum for the oppressed of all nations? Hither, allow me to ask, have not all the people of the nations of the earth come for an asylum and for refuge? All the nations of the earth and all the varieties of the races of the nations of the earth have gathered her. In the early settlements of the country the Irish, the French, the Swede, the Turk, the Italian, the Moor and so I might enumerate all the races and all the variety of races, came here, and it is a fundamental mistake to suppose that settlement was begun here in the interests of any class or condition or race or interest. This Western continent was looked to as an asylum for the oppressed of all nations and of all races. Hither all nations and all races have come. Here, sir, upon the grand plane of republican democratic liberty, they have undertaken to work out the great problem of man's capacity for self-government without stint or limit.

Then the honorable Senator advances one step further, and contends that not only was society formed in the interests of a race—the superior race, as he is pleased to call it—but that government here was organized in the interests of a race. I deny it utterly. I deny that government was organized in the interest of any race or color, and there is neither "race" nor "color" in our history politically or civilly—not a bit of it. Is there any "color" or "race" in the Declaration of Independence, allow me to ask? "All men are created equal" excludes the idea of race or color or caste. There never was in the history of this country any other distinction than that of condition, and it was all founded on condition.

We have been told, Mr. President, that this question of race was clearly recognized and settled in a case that was before the Supreme Court some years ago—the Dred Scott case, so called. But, as has already been pointed out by Senator Johnson, that decision expressly recognized that exclusion from citizenship was based on a former condition, namely servitude, and not on race.

JOHN B. HENDERSON [Mo.].—An individual of the Caucasian race, whether he pays a tax in a State or not, is undoubtedly regarded as a citizen of the United States. Why make it obligatory upon the Indian, owing no allegiance to any tribal author-

ity, to pay a tax before he can be regarded as a citizen of the United States? As the Senator from Indiana [Mr. Hendricks] very properly remarked, the United States citizenship in that case is dependent upon nothing except the possession of property upon which a tax is actually paid. I suppose that, according to the rule adopted in the amendment, a State ought to be permitted to exclude any white man from taxation, and by so doing to deny him the rights of citizenship. Why not?

My point is that the Indian, if he is connected with no tribe, whether he is taxed or not, ought to be a citizen of the United States. What harm can there be in declaring that fact? What injury can it do? The State need not admit him to the franchise. He may be a citizen of the United States, and yet not have all the privileges and all the immunities of a citizen of the State in which he may be. The State may deny him any of them that it chooses to deny. But why not declare him a citizen of the United States? What harm can there be in that? It will enable him to sue in the courts of the United States to enforce his rights there, and I cannot see for my part what else it will do. As the Constitution now stands, of course the State cannot be injured in any of its reserved powers.

It can certainly do none of the States any harm to declare that the Indian himself, owing no allegiance to any tribe, and thereby not falling within the exception of the amendment as owing allegiance *quasi* to a foreign power (regarding the Indian tribes as foreign powers), shall be regarded as a citizen of the United States. Now that we are fixing the law on the subject, why not declare every man born in the United States to be a citizen of the United States, irrespective of race or previous condition?

Ought Georgia, or Florida, or Virginia, or any other State have the power to say, "We will not tax the negroes, and thereby nullify the declaration of the United States Congress that they are citizens of the United States"? If the mere fact of paying a tax in the respective States shall confer citizenship, why not make that applicable to the negro as well as the Indian? Why discriminate when laying down a great and broad principle?

James R. Doolittle [Wis.].—If you make the Indians citizens, they will not only have the privileges of citizens, but they will be subjected to the duties of citizens. They will not only have the right to sue, but they will be liable to be sued. They will not only have the right to make contracts, but they will be bound by their contracts; and that is a policy which the Gov-

ernment has resisted from the beginning in its dealings with the Indians, except with those Indians who have become citizens and liable to be taxed. Then they are regarded as citizens of the United States. Without going into the argument at length, I am decidedly of the opinion that, if by declaring the Indians to be citizens you are going to bind them by their contracts and permit them to be sued as other citizens are in the courts of the United States, the Indians are not yet prepared for citizenship.

So far as relates to the Indian population, they can be provided for specially by other acts of Congress when the question shall arise.

SENATOR TRUMBULL.—What does that phrase "excluding Indians not taxed" mean? The Senator from Missouri understands it to be a property qualification to become a citizen. Not at all. It is a constitutional term used by the men who made the Constitution itself to designate, what? To designate a class of persons who were not a part of our population. That is what it means. They are not counted in the census. They are not regarded as a part of our people. The term "Indians not taxed" means Indians not counted in our enumeration of the people of the United States.

SENATOR JOHNSON.—Considered virtually as foreigners.

SENATOR TRUMBULL.—Considered virtually as foreigners, as a description of persons connected with those tribes with whom we make treaties. That is what the phrase means. Whenever they are separated from those tribes, and come within the jurisdiction of the United States so as to be counted, they are citizens of the United States. The Senator wants to know why, if an Indian cannot be a citizen without being taxed, should a white man or a negro be a citizen without being taxed? If the negro or white man belonged to a foreign government he would not be a citizen; we do not propose that he should be; and that is all that the words "Indians not taxed," in that connection, mean.

Senator Trumbull's amendment to the bill, declaring natives of the United States, excluding Indians not taxed, to be citizens, was passed by a vote of 31 to 10.

On Friday, the 2nd, Senator Davis returned to his fundamental proposition: that the negro, *per se*, without regard to his present or previous condition of servitude, was excluded by the Constitution from citizenship and

therefore that a declaration that a free negro was a citizen was void and if made a part of the Constitution would be revolutionary. He asked Senator Johnson to point out the constitutional rule that made a distinction between a free negro and a slave negro in this respect. Senator Johnson again referred him to the statement concerning the matter in the Dred Scott discussion. Senator Davis replied that this was an *obiter dictum,* an expression of an opinion which was not a part of the decision.

The honorable Senator is the ablest living lawyer in the land. I have seen gentlemen sometimes so much the lawyer that they had to abate some of the statesman. [Laughter.] My honorable friend knows that, when an opinion is rendered by a court, the opinion is authority only upon the question before the court. It has often been assumed that Lord Mansfield, in the celebrated case of Sommersett, decided that slavery did not and could not exist in England. He decided no such principle. Indeed, if his *obiter dicta* had the force of a decision, which they had not, he decided diametrically the reverse. He said expressly that slavery existed in every English colony in America, that property in slaves was then recognized in England, and that the sale of slaves was a good and sufficient consideration to uphold a contract and a suit and a recovery upon that contract in Westminster Hall. But his sole valid decision was that there were laws in England passed by Parliament that were incompatible with the owner of Sommersett taking him forcibly from England back to a slave colony in the West Indies; that these laws required him to issue a writ of *habeas corpus* discharging Sommersett. He said, furthermore, that, but for those laws, he would not have granted the writ of *habeas corpus,* and it would have been impossible to do so.

But I go on; I beg pardon for this digression. I maintain that a negro cannot be made a citizen by Congress; he cannot be made a citizen by any naturalization laws because the naturalization laws apply to foreigners alone. No man can shake the legal truth of that position. They apply to foreigners alone; and a negro, an Indian, or any other person born within the United States, not being a foreigner, cannot be naturalized; therefore they cannot be made citizens by the uniform rule established by Congress under the Constitution, and there is no other rule. They could not be made citizens by treaty. If

they are made so at all, it is by their birth, and the locality of their birth, and the general operation and effect of our Constitution. If they are so made citizens, that question is a judicial question, not a legislative question. Congress has no power to enlarge or extend any of the provisions of the Constitution which bear upon the birth or citizenship of negroes or Indians born in the United States. All the provisions, all the principles, all the rights which the Constitution established in relation to those matters are fixed, immutable as the Constitution itself, and Congress by no ancillary legislation can enlarge the effect or the operation of any of those provisions or principles of the Constitution, or of any rights that could be claimed under them. Then, if a negro is a citizen of the United States at all, he is a citizen by birth and by operation of the Constitution, and his rights are not to be increased or fortified, nor can they be weakened or restricted or diminished by congressional legislation. He holds them by a higher warrant than any law of Congress. He holds them by the Constitution of the United States. That Constitution cannot be interpreted, even, much less can it be expanded or restricted by a law of Congress.

But, admitting that Congress could declare negroes citizens against State laws and regulations to the contrary, the Senator said that thereby the bill became unconstitutional on another point, namely, that it discriminated in favor of one class of citizens (negroes), against another (whites) in that special provisions were made to enforce the rights of the former class, and that, too, by military instead of civil power.

When, sir, was such partiality ever shown for the white man, the sovereign, citizen, and lord of this land—him who made the Government, who won its independence, who established, as he thought, the deep and firm foundations of a free Government in a written Constitution, and whose mission it is to uphold and to defend that Government for himself and for his latest posterity? When was such partial, unjust, and iniquitous legislation devised for the white man who achieved all this good for his country and for the world? Never, never. But the negro and his insane friends bring up now for the first time such monstrous legislation.

If these are to be the results of the war, better that not a single man had been marshaled in the field nor a single star

worn by one of our officers. These military gentlemen think they have a right to command and control everywhere. They do it. They think they have a right to do it here, and we are sheep in the hands of our shearers. We are dumb.

Mr. President, I do not know how soon, for my action on the present occasion, I shall be compelled to silence by the military power of my country, by the men who ought to be subordinate to the civil power. When the Father of his Country surrendered his military commission, his proudest and most glorious boast was that he had always kept the military subordinate to the civil power. Times have changed. The military power is now rampant and triumphant, and all we have to do is to bow our heads. But I live in the hope that a better day is coming, when the proudest military man in the land, with all his bloody laurels, will find that he is but an instrument in the hands of the law, and that he has to yield the same submission to the law that the humblest citizen of the land does.

Senator Trumbull.—If the Senator from Kentucky has satisfied the Senate that he is dumb, I presume he has satisfied the Senate of all the other positions he has taken; and the others are just about as absurd as that declaration. He denounces this bill as "outrageous," "most monstrous," "abominable," "oppressive," "iniquitious," "unconstitutional," "void."

Now, what is this bill that is obnoxious to such terrible epithets? It is a bill providing that all people shall have equal rights. Is not that abominable? Is not that iniquitous? Is not that most monstrous? Is not that terrible on white men? [Laughter.]

Sir, this bill applies to white men as well as black men. It declares that all persons in the United States shall be entitled to the same civil rights, the right to the fruit of their own labor, the right to make contracts, the right to buy and sell, and enjoy liberty and happiness; and that is abominable and iniquitous and unconstitutional! With what consistency and with what face can a Senator in his place here say to the Senate and the country that this is a bill for the benefit of black men exclusively when there is no such distinction in it, and when the very object of the bill is to break down all discrimination between black men and white men?

Now, sir, what becomes of all the Senator's denunciation? The bill is applicable exclusively to civil rights. It does not propose to regulate the political rights of individuals; it has nothing to do with the right of suffrage, or any other political

right; but is simply intended to carry out a constitutional provision and guarantee to every person of every color the same civil rights.

But, says the Senator, it breaks down the local legislation of all the States; it consolidates the power of the States in the Federal Government. Why, sir, if the State of Kentucky makes no discrimination in civil rights between its citizens, this bill has no operation whatever in the State of Kentucky. Are all the rights of the people of Kentucky gone because they cannot discriminate and punish one man for doing a thing that they do not punish another for doing? The bill draws to the Federal Government no power whatever if the States will perform their constitutional obligations.

The Senator goes on to say that there is no authority in the Congress of the United States to declare a person a citizen except it be by way of naturalizing a foreigner, and this in face of precedents I had shown him to the contrary.

SENATOR DAVIS.—I did not say there was no precedent for it. In my opinion, the precedents were inadvertently passed, and, at any rate, they were outside of the power of Congress.

SENATOR TRUMBULL.—The Senator chooses to regard everything to be outside of the power of Congress by denouncing it as such. As I said, his speech is made up of these denunciations. He is troubled about amalgamation, and becomes excited and vehement in talking about it. I should have supposed that at his time of life he would feel protected against it without any law to put him in the penitentiary if he should commit it. [Laughter.] Sir, we need no law of the kind where there is no disposition for this amalgamation. I apprehend that if the States prefer to pass laws on that subject——

SENATOR DAVIS.—Why did your own State pass such a law?

SENATOR TRUMBULL.—Does not the Senator from Kentucky know that we have a great many Kentuckians in Illinois? [Laughter.] A great many of his people settled nearly the whole of the lower part of my State, and, as they came over from under such a law and had to be restrained at home, we were afraid to risk them when they got into Illinois. [Laughter.] But, sir, now that Egypt[1] is redeemed, I do not think there will be any necessity for continuing that act in my State. [Laughter.]

SENATOR GUTHRIE.—If this bill passes, all the Southern States must remodel their laws upon the subject of offences. I would advise that there should be but one code for all persons,

[1] The lower part of Illinois.

black as well as white; that there shall be one general rule for the punishment of crime in the different States. But, sir, the States must have time to act on the subject; and yet we are here preparing laws and penalties, and proposing to carry them into execution by military authority, before the States have had time to legislate, and even before some of their legislatures have had time to convene. I think the States of this Union are entitled to some little consideration before you inflict military government upon them.

I tell you, gentlemen, it is my firm conviction that the bill can lead to nothing but strife and ill feeling, which will grow and continue to grow. Where it will end God only knows. The time will not always be that the citizens will be content that the State governments should be interfered with, and that there should be in each State two sets of police officers, one to punish those who commit what they presume to be offences against the Africans, and another to punish the African for his crimes under the State laws, and that punishment should be made the pretence of prosecuting the white man in your courts. The thing will not work; it ought not to work; and it never should have been introduced here. It is not necessary to secure the freedom of the African. Slavery does not exist. The ordinary process and proceeding of law is ample for his protection. But when you overturn the State governments, interfere by your legislation with their laws, supersede their courts, keep up a constant contention between the individuals and the tribunals, you are destroying the unity of this Government and the purposes for which the States were formed.

The gentleman from Illinois says that this is simply a bill providing that all persons shall have their rights. I might return the compliment by saying that it is simply a bill declaring that we have established a military despotism and the laws are to be enforced at the point of the bayonet.

Senator Hendricks dwelt upon the coercive features of the bill, which he said were those of the Fugitive Slave law that the Republican defenders of the present bill had in times past so vehemently opposed and finally repealed.

Now you reënact these provisions, and you claim them as a merit and as an ornament to the legislation of the country; and you add an army of officers and clothe them with the power to call upon anybody and everybody to pursue the running white man. That is not enough, but you must have the mili-

tary to be called in, at the pleasure of whom? Such a person as the President may authorize to call out the military forces. Where it shall be, and to whom this power shall be given, we do not know.

Henry S. Lane [Ind.] replied:

My distinguished colleague, if I understand him aright, places his objection to this bill, first, upon the ground that we have pressed into the service the machinery of the Fugitive Slave law; and, secondly, that we authorize this bill to be enforced by the military authority of the United States. It is true that many of the provisions of this bill, changed in their purpose and object, are almost identical with the provisions of the Fugitive Slave law, and they are denounced by my colleague in their present application; but I have not heard any denunciation from my colleague, or from any of those associated with him, of the provisions of that Fugitive Slave law which was enacted in the interest of slavery, and for purposes of oppression, and which was an unworthy, cowardly, disgraceful concession to Southern opinion by Northern politicians. I have suffered no suitable opportunity to escape me to denounce the monstrous character of that Fugitive Slave act of 1850. All these provisions were odious and disgraceful, in my opinion, when applied in the interest of slavery, when the object was to strike down the rights of man. But here the purpose is changed. These provisions are in the interest of free men and of freedom, and what was odious in the one case becomes highly meritorious in the other. It is an instance of poetic justice and of apt retribution that God has caused the wrath of man to praise Him. I stand by every provision of this bill, drawn, as it is, from that most iniquitous fountain, the Fugitive Slave law of 1850.

Then, if the military had been called upon to execute an infamous law like the Fugitive Slave act, where the sheriff and the *posse comitatus* were ineffectual to do so, owing to local opposition, why should they not be used now, under similar conditions, to execute a good law?

Senator Cowan said that the supreme objection to the bill was that in case of a conflict between the State courts and the military power the latter could decide and there could be no appeal to the Supreme Court. The Fugitive Slave law was unconstitutional in this respect,

he held, and he could not see how this feature could be justified merely because it was applied for a good purpose rather than a bad. Even the Confederate States in their Constitution had enacted that State courts should be supreme in the restoration of fugitive slaves. Certainly in time of peace no military power should intervene between State courts and the Supreme Court.

I ask you where is this to end? If this is to be a consolidated Government, if all power is to be concentrated at Washington, if all the powers heretofore reserved to the States are to be given to this Government, let us know it. I am not very certain that, personally, I should have any very great objection to it. One great government for this great empire might be perhaps cheaper, might perhaps induce a greater homogeneousness among the people than the several State governments which exist now; but that is not the question for determination. We sit here by virtue of authority derived from the American people, hedged, limited, circumscribed, and bounded by the terms of the great organic law, the Constitution, and it is not for us to transcend that until the will of our principals in that behalf is known and signified according to the forms in that Constitution laid down for the purpose of making amendments to it. Then, I say, if we are to preserve this form, if this is to be a Union of States, and a Union of States which shall have all the rights reserved that have not been delegated to the general Government, and if that is the theory on which we are to proceed, if the people of the several States, in their domestic and civil and political relations, are to be regulated by the States, then, certainly, upon no known principle of the law can this bill be justified, and particularly by no known principle of any constitutional law or of any sound reason can the principle of substituting military power for a writ of error be sustained or maintained.

Senator Trumbull replied that the military were to be called in merely to aid the courts in executing the law —an office specifically provided for in the Constitution.

Senator Hendricks said the bill also conferred upon the military the authority to prevent a violation of the law before there was such violation, and therefore before a case could come before a court. Is that in aid of a court?

Senator Trumbull replied that this provision was based on the general constitutional authority for Congress to call out the militia "to execute laws of the Union." It did not take the place of a writ of error, for the courts still exist. He cited acts similar to the pres-

THE HOUR OF MARTYRDOM HAS COME

"Now I *must* marry my daughter to a Nigger!"

Cartoon by Thomas Nast

ent one which had been passed under this authority, notably that passed in 1838, during Van Buren's administration, to enforce the collection of revenue.

The bill was passed by a vote of 33 to 12. Senator Cowan voted in the negative; Senator Doolittle was present but did not vote; Senator Johnson was absent; he would have voted against the bill.

The action of the House on the bill is thus summarized by Mr. Blaine in his "Twenty Years of Congress":

Debate in the House

The bill immediately went to the House, and on the 1st of March that body proceeded to consider it without its reference to the Judiciary Committee. James F. Wilson, of Iowa, chairman of that committee, said they had considered it informally, and in order to save time it was brought up for action at once. The first amendment offered was to strike out "inhabitants" and insert "citizens of the United States," and thus avoid the embarrassments that might result from giving it so broad an extension. The amendment was promptly agreed to. Mr. Wilson, by another amendment, removed the difficulties suggested in the Senate by Reverdy Johnson, touching the question of marriage between the races. He supported the bill in a speech of great strength and legal research. He admitted at the outset that:

> "Some of the questions presented by the measure are not entirely free from defects. Precedents, both judicial and legislative, are found in sharp conflict concerning them. The line which divides these precedents is generally found to be the same which separates the early from the later days of the Republic. The farther the Republic drifted from the old moorings of the equality of human rights, the more numerous became the judicial and legislative utterances in conflict with some of the leading features sought to be reëstablished by this bill."

The debate was continued by Andrew J. Rogers [N. J.], in the opposition, by M. Russell Thayer [Pa.], who made an uncommonly able speech in its favor, and by Charles A. Eldridge [Wis.], who tersely presented the objections entertained by the Democratic party to such legislation. There were some apprehensions in the minds of members on both sides of the House that the broad character of the bill might include the right of suffrage, but to prevent that result Mr. Wilson moved to add a new section declaring that "nothing in this act shall be so construed as to affect the laws of any State

concerning the right of suffrage." Mr. Wilson said that the amendment he proposed did not change his own construction of the bill; he did not believe the term "civil rights" included the right of suffrage; he offered it simply from excessive caution, because certain gentlemen feared trouble might arise from the language of the bill. The amendment was unanimously agreed to. John A. Bingham [O.], Henry J. Raymond [N. Y.], and other prominent members of the House, to the number of forty in all, debated the bill exhaustively. It was passed by 111 yeas to 38 nays.

The President's Veto

The bill reached the President on the 18th of March (1866), and on the 27th he sent to the Senate a message

THE VETO GAL[L]OP

Cover design of a musical composition by "Make Peace"

From the collection of the New York Historical Society

regretting that it contained provisions which he could not approve. "I am therefore constrained," he said, "to return it to the Senate, in which it originated, with my objections to its becoming a law." The President stated that by the first section the Chinese of the Pacific States, Indians subject to taxation, the people called gypsies, as well as the entire race designated as black—people of color, negroes, mulattoes, and persons of African blood—"are made citizens of the United States." The President did not believe that this class possessed "the requisite qualifications to entitle them to all the privileges and immunities of citizens of the United States." He sought to raise prejudice against the bill, says Mr. Blaine, because it proposed "to discriminate against large numbers of intelligent, worthy, and patriotic foreigners, in favor of the negro, to whom, after long years of bondage, the avenues to freedom and intelligence have now been suddenly opened."

"It is proposed by a single legislative enactment to confer the rights of citizens upon all persons of African descent born within the extended limits of the United States, while persons of foreign birth who make our land their home must undergo a probation of five years, and can then only become citizens of the United States upon the proof that they are of good moral character, attached to the principles of the Constitution of the United States, and well disposed toward the good order and happiness of the same."

The President sought to impress upon Congress, in strong language, the injustice of advancing four millions of colored persons to citizenship "while the States in which most of them reside are debarred from any participancy in the legislation." He found many provisions of the bill in conflict with the Constitution of the United States as it had been hitherto construed, and argued elaborately against its expediency or necessity in any form.

"The white race and the black race have hitherto lived in the South in the relation of master and slave—capital owning labor. Now suddenly the relation is changed, and, as to the

ownership, capital and labor are divorced. In this new relation, one being necessary to the other, there will be a new adjustment, which both are deeply interested in making harmonious. . . . This bill frustrates this adjustment. It intervenes between capital and labor and attempts to settle questions of political economy through the agency of numerous officials, whose interest it will be to foment discord between the two races, for as the breach widens their employment will continue and when the breach is closed their occupation will terminate.

"The details of this bill establish for the security of the colored race safeguards which go indefinitely beyond any that the general Government has ever provided for the white race; in fact, the distinction between white and colored is by the provisions of this bill made to operate in favor of the colored and against the white race. The provisions of the bill are an absorption and assumption of power by the general Government, which, being acquiesced in, must eventually destroy our federative system of limited power and break down the barriers which preserve the rights of States. It is another step, or rather stride, toward centralization and the concentration of all legislative power in the general Government. The tendency of the bill must be to resuscitate rebellion and to arrest the progress of those influences which are more closely thrown around the States—the bond of union and peace."

The debate upon the President's veto, says Mr. Blaine, was not very prolonged but was marked by excitement approaching to anger. Senator Trumbull, who had charge of the bill, analyzed the President's argument with consummate ability and readily answered him on every point of constitutional law which he had adduced. He did more than this. He pointed out with unflinching severity what he considered the demagogical features of the message.

"The best answer to the President's objection that the bill proposes to make citizens of Chinese and gypsies and his reference to the discrimination against foreigners is to be found in a speech delivered in this body by the President himself, on the occasion of a message being sent to the Senate by Mr. Buchanan, then President of the United States, returning with his objections what was known as the Homestead bill. On that occasion Senator Johnson, of Tennessee, said, 'This idea

about poor foreigners somehow or other bewilders and haunts the imagination of a great many. I am constrained to say that I look upon this objection to the bill as a mere quibble on the part of the President, as being hard pressed for some excuse in withholding his approval of the measure. His allusion to foreigners in this connection looks to me more like the *ad captandum*[1] of the mere politician or demagogue than a grave and sound reason to be offered by the President of the United States in a veto message on so important a measure as the Homestead bill.' ''[2]

Senator Trumbull argued with great force that the citizen has a counter-claim upon the Government for the comprehensive claim which the Government has upon the citizen.

"It cannot be that we have constituted a government which is all-powerful to command the obedience of the citizen but has no power to afford him protection. Tell it not, sir, to the father whose son was starved at Andersonville, or the widow whose husband was slain at Mission Ridge, or the little boy who leads his sightless father through the streets of your city, or the thousand other mangled heroes to be seen on every side of us to-day, that this Government, in defence of which the son and the husband fell, the father lost his sight, and the others were maimed and crippled, had the right to call these persons to its defence but now has no power to protect the survivors or their friends in any rights whatever in the States. Such, sir, is not the meaning of our Constitution: such is not the meaning of American citizenship. Allegiance and protection are reciprocal rights."

On April 6 the vote was taken upon passing the bill over the President's veto; the ayes were 33 and the nays 15. Every Senator was present except Mr. Dixon of Connecticut, still detained from the Senate by illness. Among the nays were Senators Cowan and Doolittle.

The bill went to the House and after a very brief debate came to a vote on the 9th of April—yeas 122, nays 41. Speaker Schuyler Colfax [Ind.] directed that his name should be called in order that he might have the honor of recording himself for the bill. He then an-

[1] "Buncombe."

[2] See Volume X, chapter I.

nounced that, having received the vote of two-thirds of each House, the Civil Rights bill had become a law, the President's objections to the contrary notwithstanding. The announcement was received with an outburst of applause in which the members of the House as well as the throng of spectators heartily joined.

CHAPTER XII

The Fourteenth Amendment

[equality of civil rights]

James G. Blaine [Me.] and Roscoe Conkling [N. Y.] Propose Constitutional Amendments Excluding from the Basis of Representation in the House Persons to Whom Civil Rights Are Denied by States—Thaddeus Stevens [Pa.] Introduces Amendment to Constitution to Establish Equality of Individual Rights Throughout the States, Fix Their Representation in Congress, Defer Extension of National Suffrage to ex-Rebels, and Repudiate Rebel Debts and Compensation of All Owners of Liberated Slaves—Supplementary Bills Providing for Ratification of the Amendment by the States and for Exclusion of Classes of ex-Rebels from Federal Office—Debate in the House on the Amendment: Varying Views by Mr. Stevens, James G. Blaine [Me.], William E. Finck [O.], James A. Garfield [O.], Benjamin M. Boyer [Pa.], William D. Kelley [Pa.], Andrew J. Rogers [N. J.], Gen. Robert C. Schenck [O.], Green Clay Smith [Ky.], John M. Broomall [Pa.], George S. Shanklin [Ky.], Henry J. Raymond [N. Y.], George S. Boutwell [Mass.], Samuel J. Randall [Pa.], Myer Strouse [Pa.], Nathaniel P. Banks [Mass.], Henry L. Dawes [Mass.], John A. Bingham [O.], M. Russell Thayer [Pa.]; Bill Is Passed—Debate in the Senate: Varying Views by Thomas A. Hendricks [Ind.], Jacob M. Howard [Mich.]; Bill Is Passed, and Becomes Law—Remarks of President Johnson on the Readmission of Tennessee into the Union.

ON January 8, 1866, James G. Blaine [Me.] proposed in the House of Representatives an amendment to the Constitution declaring that:

"Representatives and direct taxes shall be apportioned among the several States which shall be included within this Union according to their respective numbers, which shall be determined by taking the whole number of persons, *except those whose political rights or privileges are denied or abridged by the constitution of any State on account of race or color.*"

On the 15th of January Roscoe Conkling [N. Y.]

submitted a constitutional amendment on the subject, in two forms, making the proviso in one case that, "whenever in any one State the political rights or privileges of any man shall be denied or abridged on account of race or color, all persons of such race or color shall be excluded from the basis of representation," and in the other case that "when the elective franchise in any State shall be denied or abridged on account of race or color, all persons of such race or color so denied shall be excluded from the basis of representation."

On the 22nd of January the Reconstruction Committee, both in the Senate and House, reported their proposed amendment to the Constitution on this subject. It was in these words:

> "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective numbers, counting the whole number of persons in each State—excluding Indians not taxed; provided that, whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons of such race or color shall be excluded from the basis of representation."

The amendment was substantially the second form of that proposed by Mr. Conkling.

Mr. Blaine has reported the debate upon this measure in his "Twenty Years of Congress" [Vol. II, pages 194-204], and for it the reader is referred to his admirable digest.

The resolution was carried in the House—yeas 120, nays 46; but defeated (since it required a two-thirds vote) in the Senate—yeas 25, nays 22.

The report of the Reconstruction Committee was made in the House of Representatives by Thaddeus Stevens [Pa.] on April 30, 1866. It consisted of a joint resolution proposing an Amendment (the Fourteenth) to the Constitution with the following provisions:

1. No State shall "abridge privileges or immunities" of citizens of the United States; nor "deprive any person of life, lib-

erty, or property without due process of law''; nor deny him equal legal protection.

2. Representation in Congress shall be appointed according to population, excluding Indians not taxed; and, in States where suffrage is denied, male citizens over twenty-one years of age not debarred therefrom for ''participation in rebellion or other crime,'' excluding these persons.

3. Former rebels shall also be excluded until July 4, 1870, from voting for Representatives in Congress and presidential electors.

4. Rebel debts and claims for compensation for emancipation of slaves shall not be recognized by the United States nor any State.

5. Congress shall have power to enforce this article by appropriate legislation.

Supplementary bills were also reported from the committee, admitting the lately revolted States to the Union upon ratification of the amendment, and declaring certain classes of ex-rebels ineligible to office in the Federal Government, these classes being in the main those excluded from acceptance of the amnesty offered by President Johnson.

Discussion of the proposed amendment began on May 8, 1866. Speeches were limited to one-half hour each, causing the debate to be condensed and direct.

Reconstruction by Constitutional Amendment

House of Representatives, May 8–10, 1866

Mr. Stevens opened the debate. He said that the proposition was not all that the committee wished, but all that public opinion would at present sustain.

Upon a careful survey of the whole ground, we did not believe that nineteen of the loyal States could be induced to ratify any proposition more stringent than this. I say nineteen, for I utterly repudiate and scorn the idea that any State not acting in the Union is to be counted on the question of ratification.

Mr. Stevens denounced the Senate for defeating the former amendment proposed by the Committee on Representation of States in Congress. It would, he said, have "secured the enfranchisement of every citizen at no distant period." He also denounced the Senate for defeating the amendment repudiating the rebel debt. It would, he said, "have gone far to curb the rebellious spirit of secession and to have given the oppressed race their rights."

After having received the careful examination and approbation of the committee, and having received the united Republican vote of one hundred and twenty Representatives of the people, it was denounced as "utterly reprehensible," and "unpardonable"; "to be encountered as a public enemy"; "positively endangering the peace of the country, and covering its name with dishonor." "A wickedness on a larger scale than the crime against Kansas or the Fugitive Slave law; gross, foul, outrageous; an incredible injustice against the whole African race"; with every other vulgar epithet which polished cultivation could command. It was slaughtered by a puerile and pedantic criticism, by a perversion of philological definition which, if when I taught school a lad who had studied Lindley Murray had assumed, I would have expelled him from the institution as unfit to waste education upon. But it is dead, and unless this (less efficient, I admit) shall pass, its death has postponed the protection of the colored race perhaps for ages. But men in pursuit of justice must never despair. Let us again try and see whether we cannot devise some way to overcome the united forces of self-righteous Republicans and unrighteous copperheads. It will not do for those who for thirty years have fought the beasts at Ephesus to be frightened by the fangs of modern catamounts.

Let us now refer to the provisions of the proposed amendment.

Here Mr. Stevens read the first section.

I can hardly believe that any person can be found who will not admit that every one of these provisions is just. They are all asserted, in some form or other, in our Declaration or organic law. But the Constitution limits only the action of Congress, and is not a limitation on the States. This amendment supplies that defect, and allows Congress to correct the

unjust legislation of the States, so far that the law which operates upon one man shall operate *equally* upon all. Whatever law punishes a white man for a crime shall punish the black man precisely in the same way and to the same degree. Whatever law protects the white man shall afford "equal" protection to the black man. These are great advantages over their present codes. Now different degrees of punishment are inflicted, not on account of the magnitude of the crime, but according to the color of the skin. Now color disqualifies a man from testifying in courts, or being tried in the same way as white men. Unless the Constitution should restrain them those States will all, I fear, keep up this discrimination, and crush to death the hated freedmen. Some answer: "Your Civil Rights bill secures the same things." That is partly true, but a law is repealable by a majority. And I need hardly say that the first time that the South with their copperhead allies obtain the command of Congress it will be repealed. The veto of the President and their votes on the bill are conclusive evidence of that. This amendment once adopted cannot be annulled without two-thirds of Congress. That the enemies of the amendment will hardly get. And yet certain of our distinguished friends propose to admit State after State before this becomes a part of the Constitution. What madness! Is their judgment misled by their kindness; or are they unconsciously drifting into the haven of power at the other end of the avenue? I do not suspect it, but others will.

The second section I consider the most important in the article. The effect of this provision will be either to compel the States to grant universal suffrage or so to shear them of their power as to keep them forever in a hopeless minority in the national Government, both legislative and executive. If they do not enfranchise the freedmen, it would give to the rebel States but thirty-seven Representatives. Thus shorn of their power, they would soon become restive. Southern pride would not long brook a hopeless minority. True, it will take two, three, possibly five years before they conquer their prejudices sufficiently to allow their late slaves to become their equals at the polls. That short delay would not be injurious. In the meantime the freedmen would become more enlightened, and more fit to discharge the high duties of their new condition. In that time, too, the loyal Congress could mature their laws and so amend the Constitution as to secure the rights of every human being, and render disunion impossible. Heaven forbid that the Southern States, or *any of them,* should be represented on this floor until such muniments of freedom are built high

and firm. Against our will they have been absent for four bloody years; against our will they must not come back until we are ready to receive them. Do not tell me that there are loyal Representatives waiting for admission—until their States are loyal they can have no standing here. They would merely *mis*represent their constituents.

I admit that this article is not as good as the one we sent to death in the Senate. In my judgment we shall not approach the measure of justice until we have given every adult freedman a homestead on the land where he was born and toiled and suffered. Forty acres of land and a hut would be more valuable to him than the immediate right to vote. Unless we give them this we shall receive the censure of mankind and the curse of Heaven. That article referred to provided that if *one* of the injured race was excluded the State should forfeit the right to have any of them represented. That would have hastened their full enfranchisement. This section allows the States to discriminate among the same class, and receive proportionate credit in representation. This I dislike. But it is a short step forward. The large stride which we in vain proposed is dead; the murderers must answer to the suffering race. I would not have been the perpetrator. A load of misery must sit heavy on their souls.

The third section may encounter more difference of opinion here. Among the people I believe it will be the most popular of all the provisions; it prohibits rebels from voting for members of Congress and electors of President until 1870. My only objection to it is that it is too lenient. I know that there is a morbid sensibility, sometimes called mercy, which affects a few of all classes, from the priest to the clown, which has more sympathy for the murderer on the gallows than for his victim. I hope I have a heart as capable of feeling for human woe as others. I have long since wished that capital punishment were abolished. But I never dreamed that all punishment could be dispensed with in human society. Anarchy, *treason*, and violence would reign triumphant. Here is the mildest of all punishments ever inflicted on traitors. I might not consent to the extreme severity denounced upon them by a provisional governor of Tennessee—I mean the late lamented Andrew Johnson of blessed memory—but I would have increased the severity of this section. I would be glad to see it extended to 1876, and to include all State and municipal as well as national elections. In my judgment we do not sufficiently protect the loyal men of the Rebel States from the vindictive persecutions of their victorious

Rebel neighbors. Still I will move no amendment, nor vote for any, lest the whole fabric should tumble to pieces.

I need say nothing of the fourth section, for none dare object to it who is not himself a rebel. To the friend of justice, the friend of the Union, of the perpetuity of liberty, and the final triumph of the rights of man and their extension to every human being, let me say, sacrifice as we have done your peculiar views, and, instead of vainly insisting upon the instantaneous operation of all that is right, accept what is possible, and "all these things shall be added unto you."

James G. Blaine [Me.] called Mr. Stevens' attention to the amnesty acts of 1862 and 1865, and asked:

Do we not, by the proposed action in the third section of the bill, place ourselves in the attitude of taking back by Constitutional amendment that which has been given by Act of Congress, and by Presidential proclamation issued in pursuance of the law? and will not this be justly subjected to the charge of bad faith on the part of the Federal Government?"

Mr. Stevens replied that a pardon, whether by the President having the power or specially by act of Parliament or Congress, extinguishes the crime.

"After that there is no such crime in the individual. A man steals and he is pardoned. He is not then a thief and you cannot call him a thief, or if you do you are liable to an action for slander. None of those who have been fully pardoned are affected by this provision."

Mr. Blaine replied that the constitutional amendment would be held to override the President's proclamation, being organic in its nature and therefore supreme.

"That is my understanding, and that, it seems to me, would be the legal construction; but, if the gentleman from Pennsylvania is correct, then I maintain that it is the bounden duty of this House to make the language so plain that he who runs may read—that there may be no doubt about its construction."

William E. Finck [Dem.], of Ohio, attacked the

amendment. Its very proposition was confession of the unconstitutionality of previous measures, such as the Civil Rights bill, enacted by Congress.

The third section in particular he considered an absurdity. Fix a future date when a disaffected citizen should become a loyal one, and in the meantime develop his loyalty by imposing disabilities on him? Preposterous! The very proposition of the amendment was confession of the unconstitutionality of disfranchising citizens, which had hitherto been attempted without an amendment. The purpose was evidently partisan—to prevent the States lately in revolt from having a voice in choosing the next President. He said in closing:

Sir, a strange spectacle is presented in this measure. States are called upon to deliberate on proposed amendments within their own respective jurisdictions; and these very States are deprived of all opportunity of discussing or voting upon these propositions in Congress, and are States which it is gravely proposed shall not be represented, unless they shall first adopt amendments presented to them by two-thirds of the representatives of twenty-five out of the thirty-six States of this Union. And more than all, these States are thus invited to deliberate on the modest demand made of them to disfranchise a large majority of their own citizens, through legislatures elected or to be elected, by the votes of the very men who are to be disfranchised under this amendment. Sir, the proposition need only be stated to condemn it as anti-republican and wholly at war with all the well-settled principles of a free representative Government.

It is, sir, the assertion of a principle which may embarass the nation in the future. A generation who may come after us may deem it best for the true interest of a country which may then number one hundred million people, and fifty States, to modify the rights of some other States in their representation.

Sir, this measure is dangerous to our safety. It protracts an unfortunate contest without promising any beneficial results to the harmony and prosperity of the country. The time has come, I most respectfully submit, when the feelings of sectional hate and animosity should give way to the higher and nobler principles of magnanimity, of kindness, conciliation, and true charity.

Let us rise equal to the great occasion and imitate the noble

example of our brave armies in the field, who, when the conflict had ended, no longer regarded the Southern people as enemies, but as friends. Let us welcome into these halls Representatives from all the States who may be true to the Constitution and the Union; and, when all these States shall once more gather around this common council chamber of the nation, then, and not till then, let the great questions of amendment be fairly discussed and voted upon.

Gen. James A. Garfield [O.] followed:

Sir, I believe that the right to vote, if it be not indeed one of the natural rights of all men, is so necessary to the protection of their natural rights as to be indispensable, and therefore equal to natural rights. I believe that the golden sentence of John Stuart Mill, in one of his greatest works, ought to be written on the constitution of every State, and on the Constitution of the United States, as the greatest and most precious of truth: "That the ballot is put into the hands of a man, not so much to enable him to govern others as that he may not be misgoverned by others." I believe that suffrage is the shield, the sword, the spear, and all the panoply that best befits a man for his own defence in the great social organism to which he belongs. And I profoundly regret that we have not been enabled to write it and engrave it upon our institutions, and imbed it in the imperishable bulwarks of the Constitution as a part of the fundamental law of the land.

But I am willing, when I cannot get all I wish, to take what I can get. And, therefore, I am willing to accept the propositions that the committee have laid before us, though I desire one amendment which I will mention presently.

I am glad to see this first section here which proposes to hold over every American citizen, without regard to color, the protecting shield of law. The gentleman who has just taken his seat [Mr. Finck] undertakes to show that because we propose to vote for this section we therefore acknowledge that the Civil Rights bill was unconstitutional. He was anticipated in that objection by the gentleman from Pennsylvania [Mr. Stevens]. The Civil Rights bill is now a part of the law of the land. But every gentleman knows it will cease to be a part of the law whenever the sad moment arrives when that gentleman's party comes into power. It is precisely for that reason that we propose to lift that great and good law above the reach of political strife, beyond the reach of the plots and machinations of any

party, and fix it in the serene sky, in the eternal firmament of the Constitution, where no storm of passion can shake it and no cloud can obscure it.

I wish to call the special attention of the House to the third section. The gentleman from Maine [Mr. Blaine] has made a point against it, which has at least this value: that, whatever may be the intention of the committee or of the House, the section is least susceptible of double construction. Some may say that it revokes and nullifies in part the pardons that have already been granted in accordance with law and the proclamations of the President. Others may say that it does not affect them, and will not apply to rebels who have been thus pardoned.

Mr. Stevens.—I admit that a pardon removes all liability to punishment for a crime committed. But there is a vast difference between punishing for a crime and withholding a privilege. Nobody will doubt that you may distinguish between classes in the privileges accorded to them if you think their enjoyment would be dangerous to the community. While I admit that the pardon will be full and operative so far as the crime is concerned, it confers no other advantages than an exemption from punishment for the crime itself.

General Garfield.—I was about to say that, if the section does not apply to those who have been pardoned, then it will apply to so small a number of people as to make it of no practical value; for the excepted classes in the general system of pardons form a very small fraction of the rebels. If the section does apply to those who have received the pardon, the objection of the gentleman from Maine [Mr. Blaine] may be worthy of consideration.

Mr. Speaker, the third section is, in my judgment, the only proposition in this resolution that is not bottomed clearly and plainly upon principle—principle that will stand the test of centuries, and be as true a thousand years hence as it is to-day. If the persons referred to are not worthy to be allowed to vote in January of 1870, will they be worthy in July of that year? If the franchise were withheld until they should perform some specific act of loyalty, if it were conditioned upon any act of theirs, it would commend itself as a principle, but the fixing of an ordinary date, without any regard to the character or conduct of the parties themselves, is indefensible, and will not commend itself to the judgment of reflecting men. What is worse, it will be said everywhere that this is purely a piece of political management in reference to a presidential election.

Suppose this section should become a part of the Constitu-

tion, and suppose that it were entirely defensible as a matter of principle, I ask gentlemen how it is to be carried out in practice. If, under its operation in eleven States of the Union, nine-tenths, and, in some instances, ninety-nine hundredths of the adult population are to be disfranchised for four years, how do you propose to carry its provisions into practical execution? Will nine-tenths of the population consent to stay at home and let one-tenth do the voting? Will not every ballot-box be the scene of strife and bloodshed? It may well be doubted whether this section can be carried out except by having a military force at every ballot-box in eleven States of the Union. Are you ready to make the South a vast camp for four years more. I move that the resolution be recommitted to the committee, with instructions to report it back to the House with the third section stricken out.

The motion was not carried.

Benjamin M. Boyer [Dem.], from Pennsylvania, declared that the effect of the amendment would be to disfranchise for four years nine-tenths of the voting population of eleven States.

You cannot disfranchise a majority of the voters of a State without the establishment of an oligarchy; and the Constitution as our fathers made it guarantees a republican form of government to every State.

Besides, it is not for them alone that the Union is to be restored, but for ourselves also, and our children. Every hour during which we govern the eleven States with their twelve million people as conquered provinces carries us further away from the original landmarks of the Constitution and brings us nearer to centralization and military despotism.

William D. Kelley [Pa.] asked his colleague if "magnanimity required us to hand the Government over immediately to the vanquished but unconverted rebels?"

Mr. Boyer said that the people of the South were rebels no longer, but were prepared to send loyal men to Congress and therefore their right to be there represented could not be constitutionally denied.

In reply Mr. Kelley read a letter from an ex-Confederate soldier of North Carolina, who admitted the right

of the Government to treat the States formerly in rebellion as conquered territory. The letter said:

"I have always held that it was absurd in us, after being reduced to submission by the Federal Government, to set up any claim of right to regulate the terms of settlement.

"To me it is simply ridiculous to assert that the States had both the right to secede, and, upon a failure to establish it, the right to return at pleasure. No conclusion is more logical to my mind than this, namely, that, if the right to secession existed and was exercised, the States are now conquered territory; or that, if it did not exist, the people, after attempting and failing in a revolution, forfeited their most valuable political rights. And, in either case, the consequences are practically not very different. Whatever I may think of the wisdom of your plan of reconstruction, the right of the Government to make one, nobody but an insane man can deny. Like the vanquished everywhere, I think the people of the South will reap true glory now in fortitude alone."

Upon being asked by Andrew J. Rogers [N. J.] for the name of the correspondent Mr. Kelley replied:

Sir, so bloody-minded are some of the baser sort of the reconstructed that I am not disposed to offer a victim or two upon the altar of the curiosity of the distinguished leader of the Democracy from New Jersey. [Laughter.]

Mr. Kelley read further:

"I cannot but think that the President has committed a great blunder, if not a great crime [by attempting reconstruction by unconstitutional means, and so breaking with his party]. I know verily that for two or three months after the surrender —until, indeed, his restoration policy was fully developed and considered here a fixed fact *nolens volens*—the Southern mind was more like a blank sheet of paper than I have ever known it, more free from prejudice, more disposed to broad national views, and more susceptible to impressions favorable to the North and Northern men and Northern ideas. Upon that blank sheet of paper might have been written enduring characters of peace, union, and harmony between every section of the Republic. But the time was lost; when it will return, God only knows. I give it as my deliberate conviction that the prospect is darkening

every day. Sectional pride, sectional hate, sectional ideas are as rampant here as they were before the war. Is it so at the North? I cannot believe it is so. But I am told that the determination is fixed to let no part of the fruits of the war pass away till all be fulfilled. This is right. Nor do I believe that our people will come to their senses until they realize this fact beyond cavil or dispute. The notion is sedulously inculcated here that the Northwest is thoroughly with the President and against Congress."

Upon this Mr. Kelley remarked:

The absurd notions inculcated here in Congress by gentlemen who claim to be the peculiar friends of the South are misleading the poor, impulsive, passion-ruled people of that section, and prompting them to resist all efforts at conciliation and social reconstruction, impelling them to drive Northern men and capital from their respective neighborhoods, and, by threats and deeds of violence, to retard the material development of their own section and the interlinking of ours with theirs by the ties of friendship, of commerce. Yes, it is by promulgating such groundless delusions and catering to their wounded pride that the hour of safe and perfect reconstruction is delayed. No consideration is more important than the *animus* of the masses of the Southern people; and he is not their friend who blinds their judgment or fires their hatred against the overwhelming majority of the people of the North.

Gen. Robert C. Schenck [O.] defended the bill. He said that the contest before the country was between the President's theory of reconstruction and that of the dominant party in Congress and the country.

As I understand the idea of the President of the United States—although his "policy" and his practice, I must say, on this very subject have been by no means consistent—it is that the States which have been in rebellion are now as much as any States of this Union in full, complete, and equal relation to all the other States; that their rights are in all respects the same; that among these rights is included the privilege of unquestioned representation here in the councils of the nation, and that to shut them out from the enjoyment of this is to do them, therefore, absolute wrong.

Now, sir, I will not stop to inquire when that right attached. I will not stop to inquire whether the argument which would prove that proposition would not equally well prove that all

through the rebellion, inasmuch as secession was a void act, these States and their people were fully and completely possessed of all rights in the Union, and, therefore, entitled to representation as now. I do not see where the argument is to stop. If the proposition be true, then at any time during the progress of the rebellion Virginia might have elected Robert E. Lee a Senator to represent that State and her sovereignty at the other end of the Capitol, or any of those men who were serving under him as chiefs of division and brigade to represent districts here upon this floor; and to have excluded them would have been to take away the right of Virginia and of the people of Virginia to be represented in either branch of Congress. And Robert E. Lee and other such arch-traitors could have appeared here on the floor of Congress and spent their winter in obstructing legislation intended for the purpose of aiding the Executive and war-making power in putting down the rebellion, and, whenever the spring opened and they were ready for another campaign, might have taken the field, in order, by force of arms, to attempt the destruction of the Government for which they legislated! Monstrous absurdity!

I will not stop, however, to ask when the time came, at what date the States were entirely and thoroughly and completely restored to that equal relation, because I do not believe they have any such equal, complete, normal relation as they once enjoyed while they were States in full communion with the rest of the Union. If I believed it, if I admitted that theory as to the present condition of the States, then it would follow with me necessarily that I should regard these people as having the right to vote for electors of President and Vice-President and for members of Congress, and, if they possessed this right, then to take away from them, either by statute law or organic law, the due exercise of it would be imposing on them a penalty and punishment in addition to anything else they may have before been deprived of.

Rejecting this presidential theory, as it may be termed, I come, then, to the congressional theory on this subject. I will not stop to go into the inquiry whether these States have ever been out of the Union or not.

I do not believe they ever have. I do not subscribe to the doctrine of their having been reduced to the condition of Territories in the sense in which many understand it. I believe we had the right to subdue them, and subject them to obedience precisely upon the same principle on which a father punishes his own child when he has misbehaved. He thrashes his wicked

and graceless son because he is his son, and not the child of a stranger. I believe we have a like right to inflict punishment on these rebellious States. In the domestic circle we keep the erring child in disgrace away from the table, surrounded by the rest of the inmates of the family, until he has completely, and to our satisfaction, shown by penitence and a manifestation of a proper disposition that he means to deport himself better in the future; and no such sinning child has a right to complain of this discipline.

But to the congressional theory. I understand it to be this: that these rebellious States have, of themselves, as far as they have the power to do so, broken away from their normal and proper relations to the rest of the States; that, when they thus broke away, though they did not release themselves from their obligations, they forfeited certain rights, and, among others, after refusing to be represented here, disclaiming their allegiance and denying their connection through representation with the rest of the States, they forfeited that right of representation and cannot regain it until it is properly and by law restored.

And I understand, further, the theory to be that they can be properly restored only by law, and that, until a law is enacted by which any State that has thus flung itself out of its proper relations to the Union is permitted to come back and stand upon a footing with other States and enjoy its representation here, such right of representation cannot be regained by that State.

Now if this be the true theory, as I think it is, then I have no difficulty on account of the objection made by the gentleman from Maine [Mr. Blaine], because, if those States flung away their right of representation, if they have forfeited by their misbehavior their right to claim their old, normal, formerly existing relation to the rest of the State, it is to be a work of subsequent enactment when and upon what conditions such rights and relations shall be restored to them.

Fully believing this, I aver that there is nothing that should be regarded as penalty or punishment in this third section of the proposed amendment. It takes nothing away from the people of those States. It does not disfranchise, but refuses to enfranchise. If you say that the people of these States, because of their having been engaged in the rebellion, shall not vote for Federal officers, there is nothing taken from them, because they have already divested themselves of that privilege, voluntarily abandoned, given it up, flung it away by breaking loose from

the rest of the Union, as far as by their act, disposition, and power they could do so.

If they can only be restored as States, as reorganized communities, as a people, by our action, to the enjoyment of those rights, then the very fact that we have the power by statute-law or amendment to the Constitution thus to restore them, involves the further proposition that their restoration must be upon such conditions and such terms as we shall prescribe.

My honored colleague [Mr. Garfield] proposes to get rid of this entire section, and to instruct the committee, in case the amendment be recommitted, to erase it altogether.

He says that he would be willing to have a proposition of this nature embodied in the constitutional amendment if, instead of disfranchising these insurgents until 1870, it disfranchises them perpetually.

Now, I deny the principle on which he sets out that there is anything inconsistent or wrong in making it an exclusion for a term of years instead of exclusion altogether. If there be anything in that argument, you ought not to send a man to an insane asylum for one, two, or three years, at the end of which period you may reasonably expect his intellect to be restored; you ought either to let him roam at large altogether or send him off as a lunatic for life. Or, in the case of crime, you must either not sentence a man to the penitentiary at all, or else incarcerate him for the term of his natural life. Or, to compare it to another thing, which perhaps better illustrates the principle involved, when a foreigner arrives upon our shores we should not say to him: "At the end of five years, when you have familiarized yourself with our institutions, and become attached to them, we will allow you to become a citizen, and admit you to all the franchises we enjoy," but we should require that he be naturalized the moment he touches our soil, or else excluded from the rights of citizenship forever.

Sir, I do not see that there is any principle involved in it. It is a mere question of expediency.

It has also been objected that it is exceptionable to incorporate into the Constitution any condition depending on lapse of time or a term of years—a period within or beyond which something is to be allowed or denied; and this is said to be, therefore, altogether a novel and unprecedented proposition. Sir, I deny even that. Any gentleman familiar with the Constitution will recall the provision that the slave trade, existing at the time of its adoption, should be permitted to run on for twenty years, but might be forbidden at the end of that time.

Green Clay Smith [Ky.] replied to General Schenck:

The gentleman from Ohio says that he would not admit that these States were out of the Union; that they had been in the Union and were parts of the body-politic. Well, if that is the fact, how and under what circumstances are they to be gotten out? How are they to be destroyed? The gentleman, in speaking of this subject, adopted a simile, and said that when a child has offended the father whips him, and thus by correction brings him back to obedience to the law. Now, I submit the question whether there was ever on the face of the earth a father who, though he chastised his child because of disobedience, refused that child, even after the chastisement, bread and clothing, and a place in his house. The father whips the child from love, remembering all the time that he is "bone of his bone, flesh of his flesh." He chastises him because he loves him.

Now, sir, these States are in the Union. There is, so far as I know, only one man in this House who says that they are not; and he is the member from the Lancaster district of Pennsylvania [Mr. Stevens].

You will have to live with those people; they are a part of the Government; their States are States of the Union; they are under the Constitution; they are subject to your laws, and they obey every precept that you lay down for them. And, sir, one remarkable thing is this: that, if a rebel obeys the law, you want to hang him because he does obey it! you believe the law must be wrong because he assents to it! But, if he violates the law, you want, also, to hang him! What is the poor man to do?

Relating the story of the judgment of Solomon Mr. Smith compared the Union to the child that was claimed by the mother and the harlot.

The Government of the United States is our mother; harlots North and South have attempted to destroy the child of the Government, the Constitution and the Union. It was proclaimed in the South: "Let the Union slide"; it was echoed back from the North: "Let the Union slide." They said: divide the Union; they attempted it. A long war was prosecuted for this division, but it failed. The wisdom, energy, and patriotism of the people said: "No, we will make sacrifices of blood and treasure and the great institution of slavery; but defend, save, and let live the Union of the States." These harlots cry to-day: the Union is dissolved, it is dissevered and gone; the sacrifice

made, the destruction of slavery, is not enough; let the child be divided. Their followers, but few in number it is to be hoped, however, say: "Let the Union slide"; but the party to which I belong, the great part of the Union, say: "No; we love the Union; it gives us life, protection, homes, plenty, liberty, individual freedom, and 'by the Eternal it shall be preserved.' "

John M. Broomall [Pa.] spoke on May 9. He calculated that not more than one man in twelve in the States formerly in rebellion would be disfranchised by the amendment, and therefore thought it extremely lenient.

Mr. Speaker, this measure has been spoken of as the punishment to be imposed upon the South. Why, is this all that is proposed to be inflicted upon men who have been guilty of crimes so monstrous? Is there to be no further punishment than this? Is treason not to be rendered odious? In fact, this is not a punishment at all. These people have now no rights. They are the conquered, we the conquerors; and the conquered, as everybody knows, must look to the conquerors for their future political and civil position. We propose to grant rights, we propose to give favors, but we propose to leave out one in every twelve for four years in thus giving the favors. It is not as punishment, it is as a means of future security, that this provision is asked to be incorporated in the Constitution. Why, never before were such favorable terms as these offered to any vanquished people by the victors!

These people have murdered two hundred and ninety thousand of our fellow-citizens. The man Probst, who, in Philadelphia, has been tried and sentenced to be hanged for murder, killed eight persons. He is to be hanged, and Alexander H. Stephens, who was one of the main supporters of the rebellion, is to be allowed a seat in the Senate of the United States. What a mockery of human justice!

Alexander H. Stephens sinned against light and knowledge. He was the great champion of the Union in the South. When he was bribed by the love of office into crime, what wonder that the great masses of the South followed him?

Both these men "accept the situation"; both acknowledge that they have been defeated in a war upon society; but Stephens appears before a committee of Congress and actually claims right, like the Pharisee in the temple; while poor Probst can only say: "Lord have mercy upon me a sinner."

To bolster up the pet theory of restoration founded on rebel rights, it is now denied that we have ever been at war. War supposes conquest as one obvious mode of termination, and conquest extinguishes political rights. This would not suit the purposes of those who think the South was right in her demands, but only blundered in the means employed to obtain them. Hence, there has been no war, whatever the soldiers and the bereaved ones may think to the contrary.

The President of the United States, in his recent peace proclamation, has given us from a Democratic standpoint the military history of the country for the last five years. He says that in 1861 certain persons in certain States conspired together to prevent the execution of the laws; that the Government resolved to put down the conspiracy, not in the spirit of conquest, but in that of self-preservation, and that the insurrection has now been suppressed; and this is all. This is the official report of the high Executive to his grand constituency.

From the cold official statement, who that did not feel and know of these eventful years could imagine what scenes of human sorrow are embraced within the unwritten history of that period? There was an insurrection, and it has been suppressed. Has sated ambition forgotten the immense cost to the country of the process by which it became what it is? Why, in this brief history there are hundreds of thousands of treasons unpunished. In this the blood of more than a quarter of a million murdered victims cries aloud for retributive justice. And this the President of the United States calls insurrection. If it is insurrection, in the name of all that is horrible, what is war?

George S. Shanklin [Ky.] particularly opposed the fourth section of the amendment which forbade compensation for emancipated slaves without regard to whether their owners were loyal or not.

You deny to the States the right of repudiation. Yet, in the very act of denying that right, you yourselves commit an act of repudiation. You violate the honor of the nation, which is most solemnly pledged to payment for the slaves which were enlisted in the United States army in loyal slave States. Has such compensation ever been made? It has not. The nation is pledged to the payment of that debt. The nation to-day owes to my State more than $10,000,000 under the provisions of that act. Yet now you propose a constitutional provision denying both to the States and the general Government the right to pay

such debts. By this measure you propose to violate the plighted faith of the nation; you propose to practice upon the people an outrage and a violation of their rights.

Mr. Speaker, what ought to be our policy? Should it be tyrannical and oppressive, or should it be liberal? We are told we cannot trust these people. They have given up the right of secession; they have taken the oath to support the Government and the laws; what are you going to do with them? Are you going to hold them in subjugation? England has tried a policy of that sort toward a noble and generous people, the Irish. What has been the result of that policy? Has it been to conquer them? It has been to implant in the bosom of every Irishman a deep hatred of England. That hatred has descended from sire to son; and I hope it will continue to be transmitted until that noble and generous people will rise in majesty and power and secure their freedom. Russia has pursued a similar policy toward Poland. Has the result been to subjugate the gallant Poles? They are ready at any moment to rise in rebellion. Austria has pursued the same policy. The result has always been the same.

The Southern people whom it is proposed to subjugate are a noble, brave people. They may have been deluded, they may have committed a great crime, but they are now anxious to unite with all of our people to sustain the Government. Will you receive them? Will you make them your friends? Will you rather make them your enemies? This question we must solve.

They would be most invaluable friends if you would adopt a kind, generous policy toward them, receive them and extend to them equal State and individual rights, and that without delay. By your treatment prove to them that the war you waged against them was not a war of conquest or subjugation or from malice or vengeance, but a war to maintain the Constitution of our fathers, and the rights of the Union of the States, as you declared it was when you took up arms and when the strife commenced. Redeem your plighted faith by your acts and your policy, and peace, friendship, and prosperity will once more cover our now distracted country. Then we can bid defiance to the enemies of our free institutions. No nation, however proud or domineering she may be, will dare insult our flag or deny our just rights. Generations unborn will rise up to praise and bless your memories.

Let me beseech you in the name and behalf of patriotism, justice, and a downtrodden and oppressed people, to cease your war on the President of your selection and choice, who has ex-

hibited to the world the highest order of wisdom, patriotism, charity, justice, and devotion to the equal rights of man. Discharge your Joint Committee on Reconstruction; abolish your Freedman's Bureau; repeal your Civil Rights bill, and admit all the delegates from the seceded States to their seats in Congress, who have been elected according to the laws of the country and possess the constitutional qualification, and all will be well.

Henry J. Raymond [N. Y.] expressed his approval of all the sections of the bill but the third. He dismissed as wildly visionary the calculation of Mr. Broomall that only one man in twelve in the States lately in rebellion would be affected by it. The ratio was rather the reverse, and the result of passing the section would be to create an oligarchy in the States instead of the "republican form of government" prescribed by the Constitution. Furthermore, the passage of the section would be laid by the South to the partisan desire of Republicans to win the next presidential election. Why incur this odium when it was clearly foreshadowed that General Grant would be the next Republican candidate, and he was certain to sweep the country by winning the great majority of votes from all parties in the North?

The section was as unjust as it was ungenerous to the South.

The adoption of all the proposed amendments, this one included, by each of the Southern States, is made in the bill reported by the committee a condition essential to their admission to representation in Congress. Now, the amendments are to be adopted by the legislatures of the several States. The legislatures are elected by all the people—those who have voluntarily adhered to the insurrection as well as those who have not—for the gentleman from Pennsylvania [Mr. Broomall] laid special stress upon the fact that the people are still allowed full control of their State governments.

These legislatures, thus elected, are expected to ratify all these amendments, to concede an equality of civil rights, to concede a great reduction of their political power in changing the basis of representation, to concede the repudiation of their debts and the denial of compensation for their slaves; and for what

consideration? What do we offer them in return for all these concessions? The right to be represented on this floor, provided they will also consent not to vote for the men who are to represent them! Nay, more, that they shall accept as the Representatives whom they thus get the right of having here men elected by a small minority of their people who are supposed and conceded to be hostile to them in political sentiment, and against whom they have been waging a bitter war! We offer them, in exchange for all these renunciations of political power and of material advantage, the privilege of being misrepresented in Congress by men in whose election they had no voice or vote, and with whose past political action and present political sentiments they have no sympathy whatever.

Why, sir, this not only "breaks the word of promise to the hope," it does not even "keep it to the ear." It is not merely a sham, it is a mockery. The very price by which we seek to induce their assent to these amendments we snatch away from their hands the moment that assent is secured. Is there any man here who can so far delude himself as to suppose for a moment that the people of the Southern States will accede to any such scheme as this? There is not one chance in ten thousand of their doing it.

Representation ceases to be of the slightest value to them under such conditions. They will not seek it or ask for it. They will infinitely prefer to take the chances of change in the political councils of the nation, to await the election of a Congress more propitious to their claims, especially under the comforting assurance which the gentleman from Pennsylvania [Mr. Stevens] gave them some two months ago when he said frankly that "it is of no importance by whom or when or how reconstruction is effected, for, in three short years, this whole Government will be in the hands of the late rebels and their Northern allies." They will readily wait "three short years" for representation rather than purchase the mockery of it we offer them at such a price.

The gentleman from Ohio [Mr. Schenck], in vindicating the policy of this exclusion of the Southern people from the right of suffrage, insisted that it was necessary as a means of discipline; that they are not yet in a proper frame of mind to take part in the affairs of government; that they are at heart still unfriendly and hostile to our authority and institutions; and, that we must treat them as parents do unruly children, that we must flog them for their offences and then exclude them from the family table or shut them up in a closet until they

come to a better and more submissive mood. Well, sir, this might answer if the eight million people with whom we are dealing would consent to be treated as children, and to regard us here in Congress as standing *in loco parentis* toward them. They might in that case submit tamely to the chastisement we propose, and possibly profit by it. But they are not children. They are men, men tenacious of their rights, jealous of their position, brave, and proud of their bravery, of hot and rebellious tempers, and not at all likely to be subdued in spirit or won to our love by such discipline as the gentleman from Ohio proposes to inflict. We have chastised them already. We have defeated their hostility against the Government. And now what remains? They are to be our fellow-citizens. They must form part of the people of our country. They are to take part, sooner or later, in our Government, unless we intend to discard the fundamental principle of that Government, the right of the people to govern themselves. And we cannot afford to have them, or to make them, sullen, discontented, and rebellious in temper and in purpose, even if they are submissive in act.

Why, sir, if history teaches anything, if any principle is established by the concurrent annals of all nations and all ages, it is that sentiment cannot be coerced; that opinions, even, cannot be controlled by force; and that, with any people fit to be free or to be the countrymen of men who are free, all such efforts defeat themselves and intensify and perpetuate the hostilities sought to be overcome. Ireland offers us a signal example of this, and I am amazed that members upon this floor can shut their eyes or close their minds to the lessons which her sad history teaches. England, for her harsh dealings with that unhappy land hundreds of years ago, is paying the penalty to-day and will for all time to come. By mistakes in policy precisely such in kind as we are making now, England, hundred of years ago, planted in Ireland the seeds of that disaffection which, in spite of all her attempts to undo the wrong, in spite of abundant legislation in redress of grievances, and for the good of Ireland, from time to time bursts out into feeble but bitter insurrection, and which to-day blooms into that shadowy phenomenon of Fenianism, which terrifies one continent and puzzles and poisons the other.

George S. Boutwell [Mass.] also spoke upon the third section of the bill.

I freely confess that the adoption of the third section is not necessary to the subject-matter which we have in hand. My own views of reconstruction lead me in the opposite direction. I should prefer to include those who are our friends rather than exclude even those who are our enemies. But, inasmuch as gentlemen on this floor are not prepared, as they say, to include those in the governing force of the country who have sustained the country, I see no safety in the present except in some sort of exclusion of those who are its enemies. We are to consider what sort of enemies these men are. We have defeated them in arms, but in the proposition of the Democratic party we invite them into the councils of the nation, to the only field in which they have any chance of success in the contest in which they have been engaged.

Who are these men? They are the men who to-day are radically, honestly, persistently, and religiously opposed to this Government if this Government exercises its functions. Gentlemen may not have heard of what Mr. Stephens told the committee. Alexander H. Stephens was believed to be the most conservative, most Union-loving man in the whole Southern country; and, if the opinions to which I shall refer be his opinions, with how much stronger reason may we suppose that they are the opinions of those to whom formerly he himself was somewhat opposed. What does he tell us? He tells us that in 1861 he protested against the action of the secessionists, not because he believed that they had not a constitutional basis upon which to stand, but because he thought secession bad policy, and he says that to-day his opinions are unchanged; that is to say, Mr. Stephens believes that this Government has no right to exist if the insignificant State of Florida, for instance, thinks it ought not to exist.

Mr. Stephens denies the constitutional efficacy of our amendment abolishing slavery. He says that slavery has been abolished by the States. He says that the law taxing the people of this country has no constitutional force, because they are not represented. Do you not see that his insidious and dangerous doctrines, which are responded to by the whole Democratic party of the country, portend the destruction of the public credit, the repudiation of the public debt, and the disorganization of society?

It is admitted by gentlemen on the other sides of the House that when they present a Representative here he must be a loyal man. But I need not say to gentlemen acquainted with the technicalities of the law, that a loyal man, for all purposes of repre-

sentation, is a man whose disloyalty cannot be proved. When we open the doors of the Senate and of this House to Representatives from that section of the country, they will only have to present men who cannot be convicted of having participated actively and willingly in the work of treason; but they may send men here who represent treasonable and disunion opinions, and we shall have no power to protect ourselves against them. When ever was a more insidious idea presented to the people of this country than that there is any security in demanding merely loyal Representatives? We are false to our duty if we do not go further and require that, in each of these States, before they are allowed representation, the masses of the people shall be loyal, for the Representative will reflect the views of the people. You cannot gather figs from thorns, or grapes from thistles. You must wait, if it be necessary to wait, until there is a loyal controlling public sentiment in each one of these States.

Sir, it will be found that the Union party stands unitedly upon two propositions. The first is equality of representation, about which there is no difference of opinion. The second is that there shall be a loyal people in each applicant State before any Representative from that State is admitted in Congress. And there is a third: a vast majority of the Republican party, soon to be the controlling and entire force of that party, demand suffrage for our friends, for those who have stood by us in our days of tribulation. And for myself, with the right of course to change my opinion, I believe in the constitutional power of the Government to-day to extend the elective franchise to every loyal male citizen of the Republic.

On May 10 Samuel J. Randall [Dem.], of Pennsylvania, spoke, chiefly in justification of the support of the President by the democracy.

Complaint is made, Mr. Speaker, of the support which the Democratic party, as a party, throughout the country is giving to the President in his plan of restoration. That should not surprise any one. The Democratic party, during the period of the war, have closely adhered to the Constitution and the laws of the country. They find in President Johnson that same disposition to adhere to the Constitution and the laws. The course of the Democracy, in their support of the President, is actuated by a devotion to principle. It does not emanate from any seeking for office or from any other sordid motive.

There is another matter to which I wish to direct the atten-

tion of the House, and through the House the attention of the country. I would suggest that in the view of just and reasonable men the time has arrived when this system of virulent abuse of the President of the United States should cease. It is time that there should be an end of these appeals to the morbid feelings and prejudices of the people of the North, appeals calculated to array the Northern people against the people of the South, who have laid down their arms, and who, I believe, are now seeking in good faith to conduct themselves in allegiance to the Constitution. They have been punished severely, not more severely, perhaps, than they deserve. But why should we not accept their words as expressing their real sentiments? Why should we treat them as aliens and outlaws, a policy which must for a long time prevent us from securing the full benefits of our victory?

Gentlemen seem to fear that unless something is done by legislation to prevent it the great conservative men of the country, under the leadership of Andrew Johnson, will come into possession of the legislative branch of the Government. Nothing can avert this. Your reckless extravagance, your unnumbered violations of law, your constant effort to change the organic law for party purposes, your persecutions of the President who has planted himself upon the plan of restoration which Mr. Lincoln determined upon, and your careless mode of taxation, relieving affluent men and heaping the expenses of our debt upon those least able to bear it—all these point to your certain overthrow.

The Democracy stand ready to operate with any party or set of men to crush out the party which started with a disposition to let the "South go," and now at the close of the war seek the same practical result—a continued separation of the States of the Union.

Myer Strouse [Dem.], of Pennsylvania, incorporated in his speech an article from a recent issue of the New York *Times* (the paper of Henry J. Raymond). It read in part:

"As a plan of pacification and reconstruction the whole thing is worse than a burlesque. It might be styled a farce, were the country not in the midst of a very serious drama. Its proper designation would be 'A plan to prolong indefinitely the exclusion of the South from Congress by imposing conditions to

which the Southern people will never submit. This being the obvious scope and tendency of the proposition, we are bound to assume that it clearly reflects the settled purpose of the committee.

"There is an anomalous feature in the affair as it stands, which of itself reveals the monstrous nature of the pretensions set up by the committee. All the provisions of the proposed amendment imply the adoption of the extreme view in regard to the relation of the South to the Union. We must begin by assuming that what were States before the war are mere territories now, or this attempt to dictate terms as the condition of recognition becomes undisguised usurpation. And yet the amendment, on its face, declares the existence, as States, of all the States recently in rebellion, and presupposes the exercise by their several legislatures of the highest constitutional attribute of State sovereignty.

"From the dilemma into which the committee have thus plunged there is no logical escape. If the Southern States are in a condition by their legislatures to ratify or reject a constitutional amendment they must of necessity be qualified to send Senators and Representatives to Congress, subject only to the judgment of either House as to the eligibility of the persons sent. A State which may assist in the sovereign task of molding the Constitution under which Congress acts may surely demand a voice in what the Constitution creates. The greater right covers the lesser right in this or in other cases. On the other hand, if the Southern States are not entitled to admission to Congress—are in the condition of Territories—then it follows that they are not entitled to any lot or part in the business of amending the Constitution. Upon which horn shall the 'central directory' be impaled? Shall we take it that this prodigious amendment, this mighty mouse brought forth by a mountain after five months' parturition, does not mean what it says when it speaks of the States lately in rebellion as States still, with their sovereign functions unimpaired, though for a time uninterrupted? Or shall we conclude that the doctrine of State suicide is abandoned, the doctrine of subjugation given up, and the criminal blunder of which the radicals have been guilty in excluding the South from Congress at length confessed? Let there be explicit answers upon these heads of the subject. As it at present appears the position of the committee is utterly untenable.

"Aside from these points the worthlessness of the committee's proposition is obvious. It cannot by any possibility

effect anything. With all their errors and faults the Southern people have shown that they are not cowards. They will not belie their nature by writing themselves down slaves at the bidding of a committee appointed to consider the question of reconstruction."

Gen. Nathaniel P. Banks [Mass.] said that there were two alternative methods by which to accomplish genuine reconstruction: extension of the suffrage to negroes and discrimination between loyal and disloyal white voters. The former he dismissed as at present impracticable. In regard to the second he denied that the President's amnesty had restored the recipients to their political rights.

The power of declaring who shall exercise the franchise is in the first instance conferred upon the States by the first article of the Constitution; and, in the second instance, by the provision conferring the right to judge of the election of its members on the Congress of the United States, and without their concurrence the President has no right to invest franchise in anybody.

General Banks believed that discrimination between loyal and disloyal citizens was entirely practicable.

It was said by the gentleman from Ohio [Mr. Garfield] that there is no tribunal which can judge of the proper or improper enforcement of this provision. That is an error. In regard to the election of members of Congress each House is the tribunal.

In regard to the choice of electors for President and Vice-President of the United States, which seems to have caused more apprehension, the solution is equally simple, certain, and just. There is always a tribunal that is competent to judge whether this provision of the Constitution has been properly enforced. It is not altogether a new question. In 1844 in the State of Tennessee one hundred and seventy-five or one hundred and eighty men voted directly for Polk and Dallas as candidates for President and Vice-President instead of for the presidential electors. If those votes given against the law were counted, then Mr. Polk would receive the electoral vote of that State. If they were excluded, then the electoral vote of the State would be

given for Henry Clay. In 1856 Wisconsin did not vote for electors on the day required by law. Her vote when presented here was not counted. Had the choice of President been in the balance in either case Congress would have been the tribunal to decide the issue. The two Houses would have met in convention according to the Constitution. If they agreed the question would have been decided, and the election of President declared in accordance therewith. If there was difference of opinion in regard to the question presented, the Senate would have withdrawn to its chamber; the House would have remained in its seats; and then after mature deliberation, it may have been for weeks or months, each House would have determined what should be done. And should the two Houses not come to the same conclusion, and refuse to recognize an election, the President of the Senate, or in his absence the honorable Speaker of this House, would have administered the Government until another election could have been held. This would have been done by resolution of Congress within eighteen months from the 4th of March when the vacancy was found to exist. The Constitution is equal to every emergency, and what there is defective, if anything, the wisdom of the people will supply.

Andrew J. Rogers [Dem.], of New Jersey, vehemently opposed the purpose of the bill (frankly confessed at the beginning of the debate by Mr. Stevens, and repeated by other radical Republicans, that the amendment was calculated to force the South to adopt negro suffrage in order to preserve equality of representation with the North).

God deliver this people from such a wicked, odious, pestilent despotism! God save the people of the South from the degradation by which they would be obliged to go to the polls and vote side by side with the negro!

He also repudiated the comparison instituted by Mr. Broomall between the murderer Probst and Alexander H. Stephens.

Rebellion or revolution never has been considered by the civilized world as having that odiousness and moral turpitude that attach to men for the commission of heinous crimes. And when the honorable gentleman from Pennsylvania undertakes to

charge the great masses of the South as being murderers like Probst, he goes counter to the history of the world, and against the revolution which in the end gave Magna Charta to England, and which handed down to this country those bulwarks of liberty upon which our Declaration of Independence and our Constitution are founded. I say they are not murderers, they are not thieves, they are not felons; they are simply political convicts before the altar of patriotism. And the patriotic man who now sits in the presidential chair has, in the spirit of Christianity and humanity, extended to these men pardons, which I say, which the courts say, which tradition says, and which the history of the world says, relieve their recipients of all the effects consequent upon the crime.

Henry L. Dawes [Mass.] opposed the opinion of his colleague, General Banks, that Congress could pass upon disputed votes in the Electoral College.

There is no legislation in the land upon the subject. The only provision governing the counting of the votes of the Electoral College is in the Constitution itself, and it is in these words:

"The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted."

But who shall decide, if there be a dispute, whether a vote has come from a man legally chosen? There is no tribunal yet erected to determine that fact. Chancellor Kent says that it is *casus omissus,* a case that has not been provided for by the framers of the Constitution; that there is no provision in the laws or the Constitution of the United States by which that may be determined. Whether or not it be beyond our power under the Constitution to make such provision, certain it is that we have made no such provision. The two Houses in their separate capacity act as legislators, and legislators alone, and their functions are all prescribed by the Constitution itself. This is not one of them. They are not clothed with the judicial power of passing upon the validity of an election of President and Vice-President; and suppose the Senate comes to one conclusion and the House to another, what is the result? Suppose the Senate in the Wisconsin case had determined that Mr. Buchanan was elected and the House in its separate capacity had determined that no one was elected, the Constitution requires that the House, thereupon, shall proceed immediately, yes, imme-

diately is the command of the Constitution, without the concurrence of the Senate, to choose a President. Then comes the terrible peril in which this country will be involved, the ordeal through which it will have to pass where the House of Representatives determine one way and the Senate the other.

I do not mean to say it is not within our power under the Constitution to provide a tribunal; upon that question there is no occasion to remark. I have only to say that as yet no such tribunal has been provided. On the occasion alluded to by my colleague it was the opinion of learned men both in the House and in the Senate that the country barely escaped a revolution. They did not decide, as I understood my colleague to say, by passing into their respective halls whether the vote of Wisconsin should be counted or not. The question was not decided, and remains to be decided to this day.

Israel Washburn [Me.] in the House, and Mr. Seward and Mr. Collamer in the Senate, declared the impotency of the two Houses or any tribunal known to the law to solve the difficulty, and at the same time rejoiced at the escape from peril which the immateriality of the vote in question had secured, but pointing out the terrible danger to which the nation would be exposed if ever a material vote in the Electoral College should be questioned.

John A. Bingham [O.] thought that no constitutional amendment was needed to disfranchise citizens; that an act of Congress was all that was required, and he therefore proposed to eliminate the third section from the amendment and incorporate it in a bill.

The franchise of a Federal elective office is as clearly one of the privileges of a citizen of the United States as is the elective franchise for choosing Representatives in Congress or presidential electors. They are both provided for and guaranteed in your Constitution. Why, then, prohibit rebels from the enjoyment of the first for life by an act of Congress and restrict the second for a term of years by a constitutional amendment? To be sure we all agree, and the great body of the people of this country agree, and the committee thus far in reporting measures of reconstruction agree, that the exercise of the elective franchise, though it be one of the privileges of a citizen of the Republic, is exclusively under the control of the States. But, sir, the committee never intimated and never in-

tended to intimate by any measure they have reported that any State lately in insurrection can exercise either that power or any other until it is restored to its constitutional relation to the Union, save by the express or implied consent of the Congress of the United States, nor that after being restored they can exercise that power contrary to the express conditions prescribed by Congress for their restoration. The power to prescribe these conditions is exclusively in Congress.

That is the philosophy of every measure of reconstruction now pending before the House. And that is wherein it is opposed to the opinion of gentlemen on the other side of the House who have spoken, I am sorry to say—and I say it without the slightest intention of giving offence to any man—not in the spirit of representatives of the people, but in the spirit of partisans. For myself, I cannot approach the discussion of this great question, which concerns the safety of all, in the spirit of a partisan. God forbid that I should approach this subject in any other character than that of a representative of the people—a representative of the people not unmindful of the oath which I took, sir, before your tribune.

Mr. Stevens, who began the debate, closed it. Members crowded about him in such eagerness to hear him that his speech was interrupted by protests from those who were unable to catch his words. With characteristic boldness he said:

I am glad, sir, to see great unanimity among the Union friends in this House on all the provisions of this joint resolution except the third one. I am not very much gratified to see any division among our friends on that which I consider the vital proposition of them all. Without that, it amounts to nothing. I do not care the snap of my finger whether it be passed or not if that be stricken out. Before another Congress shall have assembled here, and before this can be carried into full effect, there will be no friends of the Union left on this side of the House to carry it out, as that side of the House will be filled with yelling secessionists and hissing copperheads. Give us the third section or give us nothing. Do not balk us with the pretence of an amendment which throws the Union into the hands of the enemy before it becomes consolidated.

Gentlemen say I speak of party. Whenever party is necessary to sustain the Union I say rally to your party and save the Union. I do not hesitate to say, at once, that section is

there to save or destroy the Union party, is there to save or destroy the Union by the salvation or destruction of the Union party.

The gentleman from Ohio [Mr. Bingham] who has just taken his seat thinks it difficult to carry it into execution, and he proposes to put it into a bill which the President can veto. Will my friend tell me how much easier it is to execute it as a law than as a provision of the Constitution? I say if this amendment prevails you must legislate to carry out many parts of it. You must legislate for the purpose of ascertaining the basis of representation. You must legislate for registry such as they have in Maryland. It will not execute itself, but, as soon as it becomes a law, Congress, at the next session, will legislate to carry it out both in reference to the presidential and all other elections as we have the right to do. So that objection falls to the ground.

Gentlemen tell us it is too strong—too strong for what? Too strong for their stomachs, but not for the people. Some say it is too lenient. It is too lenient for my hard heart. Not only to 1870, but to 18070, every rebel who shed the blood of loyal men should be prevented from exercising any power in this Government. That even would be too mild a punishment for them.

Gentlemen here have said you must not humble these people. Why not? Do not they deserve humiliation? Do not they deserve degradation? If they do not, who does? What criminal, what felon deserves it more, sir? They have not yet confessed their sins; and He who administers mercy and justice never forgives until the sinner confesses his sins and humbles himself at His footstool. Why should we forgive any more than He?

But we are told that we must take them back as equal brothers at once. I shall not agree they shall come back except as supplicants in sackcloth and ashes. Let them come back and ask forgiveness, and let us then consider how many we will forgive and how many we will exclude. All I regret is, this is not sufficiently stringent.

I regret that the true men of these States cannot be brought in, but they cannot be brought in with rebel constituencies behind them. They would misrepresent their States. Therefore I can never agree to let them in under the present state of affairs. Let us have probation; let us be sure that something more than mere willingness to come in has been felt by them.

Mr. Speaker, I do not intend to occupy many minutes. I was indeed astonished to find my respected colleague [M. Russell

Thayer], I will not say so tender-hearted, but so lenient to those toward whom mercy is not rendered necessary. But I know so well his natural kindness of heart and his proximity to that eloquent divine [Henry Ward Beecher] who so lately has slaughtered whole herds of fatted calves, that I cannot be much surprised at it. But, sir, if he is so fond of such associates, let me suggest in all kindness to him that he can find better company nearer home. He lives very near Cherry Hill, where there is a State institution containing several hundred inmates whom, if he wishes to forgive and enfranchise, he will find at present a little restrained of their rights. They have done nothing but err. There is no blood upon their hands; they have only erred in committing such little acts as arson and larceny. Let him go to one of those corridors and cause it to be opened and they will flock around him, and he will see men who are not half as bloody and have not committed half as many crimes as the rebels whom he wishes to see immediately admitted here.

Now, sir, for my part I am willing they shall come in when they are ready. Do not, I pray you, admit those who have slaughtered half a million of our countrymen until their clothes are dried, and until they are reclad. I do not wish to sit side by side with men whose garments smell of the blood of my kindred. Gentlemen seem to forget the scenes that were enacted here years ago, when the men that you propose to admit occupied the other side of the House; when the mighty Toombs, with his shaggy locks, headed a gang who, with shouts of defiance on this floor, rendered this a hell of legislation.

Ah, sir, it was but six years ago when they were here, just before they went out to join the armies of Catiline. Those of you who were here then will remember the scene in which every Southern member, encouraged by their allies, came forth in one yelling body, because a speech for freedom was being made here; when weapons were drawn, and Barksdale's bowie-knife gleamed before our eyes. Would you have these men back again so soon to reënact those scenes? Wait until I am gone, I pray you. I want not to go through it again. It will be but a short time for my colleague to wait. I hope he will not put us to that test.

Mr. Thayer.—I wish to ask my colleague in this connection whether he thinks he can build a penitentiary big enough to hold eight million people.

Mr. Stevens.—Yes, sir, a penitentiary which is built at the point of the bayonet down below, and if they undertake to come

here we will shoot them. That is the way to take care of these people. They deserve it, at least for a time.

Now, Mr. Speaker, I move the previous question.

The amendment was put to vote and was passed with the requisite two-thirds majority—128 yeas, 37 nays, not voting 19. Not a single Republican voted nay. Mr. Raymond voted "Aye!" with a ringing response which elicited loud applause from both the floor and galleries.

Debate in the Senate

The Senate discussed the details of the bill rather than its principle. To prevent dispute over the words "inhabitant" and "citizen," the phrase "inhabitants, being citizens of the United States," was adopted. There was considerable debate over the disqualification-for-office clause. Thomas A. Hendricks [Ind.] wished to disqualify only those who had *during their term of office* engaged in rebellion. Jacob M. Howard [Mich.] thought that engaging in rebellion after such service was also morally heinous.

It seems to me that where a person has taken a solemn oath to support the Constitution of the United States there is a fair implication that he cannot afterwards commit an act which in its effect would destroy the Constitution of the United States without incurring at least the moral guilt of perjury."

Senator Howard's position was maintained by a large majority. It was also decided, after much discussion, that these disabilities could not be removed, even though those affected had been pardoned by the President, except by a vote of two-thirds of both chambers of Congress.

The bill as amended passed the Senate on June 8 by a vote of 33 yeas to 11 nays. Senators Cowan, Doolittle, and Johnson voted in the negative. The House concurred in the Senate amendments on June 13 by a vote of 120 to 32. The bill having received two-thirds majority in advance (as required on a constitutional amendment) was not presented to the President and was

submitted at once to the States for approval. It was ratified by State after State, until on July 28, 1868, it had received the three-fourths majority of the States necessary for it to become a law.

Readmission of Tennessee

When Tennessee, on July 19, 1866, ratified the amendment, the House passed a joint resolution restoring the State to the Union—125 ayes to 12 nays, the latter being all cast by radical Republicans. Thaddeus Stevens [Pa.], however, voted aye. The Senate concurred after modifying the preamble of the resolution to read that "the said State government can only be restored to its former political relations in the Union by the consent of the law-making power of the United States." This was done to oppose the President's theory that executive action alone was needed to accomplish the restoration.

While the President signed the bill (on July 24) he nevertheless maintained his position in a special message (July 25) on the subject. It was read the same day in the House.

"Ratifying an Anomaly"

Speech of President Johnson in Admitting Tennessee into the Union

If, as is declared in the preamble, "said State government can only be restored to its former political relations in the Union by the consent of the law-making power of the United States," it would really seem to follow that the joint resolution which at this late day has received the sanction of Congress should have been passed, approved, and placed on the statute books before any amendment to the Constitution was submitted to the legislature of Tennessee for ratification. [Applause from Democratic side.] Otherwise the inference is plainly deducible that, while in the opinion of Congress the people of a State may be too strongly disloyal to be entitled to representation, they may nevertheless, during the suspension of their "former proper, practical relations to the Union," have an equally potent voice with other and loyal States in propositions to amend the Con-

stitution, upon which so essentially depend the stability, prosperity, and very existence of the nation.

Earnestly desiring to remove every cause of further delay, whether real or imaginary, on the part of Congress to the admission to seats of loyal Senators and Representatives from the State of Tennessee, I have, notwithstanding the anomalous character of this proceeding, affixed my signature to the resolution. [General applause and laughter.] My approval, however, is not to be construed as an acknowledgment of the right of Congress to pass laws preliminary to the admission of duly qualified Representatives from any of the States. [Great laughter.] Neither is it to be considered as committing me to all the statements made in the preamble [renewed laughter], some of which are, in my opinion, without foundation in fact, especially the assertion that the State of Tennessee has ratified the amendment to the Constitution of the United States proposed by the Thirty-ninth Congress. [Laughter.] No official notice of such ratification has been received by the Executive or filed in the Department of State; on the contrary, unofficial information from most reliable sources induces the belief that the amendment has not yet been constitutionally sanctioned by the legislature of Tennessee. The right of each House, under the Constitution, to judge of the elections, returns, and qualifications of its own members is undoubted, and my approval or disapproval of the resolution could not in the slightest degree increase or diminish the authority in this respect conferred upon the two branches of Congress.

In conclusion, I cannot too earnestly repeat my recommendation for the admission of Tennessee, and all other States, to a fair and equal participation in national legislation when they present themselves in the persons of loyal Senators and Representatives who can comply with all the requirements of the Constitution and the laws. By this means harmony and reconciliation will be effected, the practical relations of all the States to the Federal Government reëstablished, and the work of restoration, inaugurated upon the termination of the war, successfully completed. [Applause from the Democratic side.]

CHAPTER XIII

Ratification of the Fourteenth Amendment

[CONTROVERSY BETWEEN CONSERVATIVES AND RADICALS]

The "Harmony" Convention (Administration): Sen. Edgar Cowan [Pa.] Reports Resolutions, and Representative Henry J. Raymond [N. Y.], Reads an Address—Reply of President Johnson to Delegation from the Convention: "The Despotism of Congress"—The "Southern Loyalist" Convention (Radical): Speech of ex-Attorney-general James Speed [Ky.], Chairman; Arraignment of the President in Resolutions; Address of Sen. John A. J. Creswell [Md.]—The Soldiers' Convention (Administration): Speech of Gen. John E. Wool, Chairman—The Citizen Soldiers' and Sailors' Convention: Speech of Gen. Jacob D. Cox [O.], Chairman; Resolutions Read by Gen. Benjamin F. Butler [Mass.]—Massacre of Loyalists at New Orleans—Speaking Tour of President Johnson—His Remarks in Cleveland on "Who Is Traitor—The President or Congress?"—His Remarks in St. Louis on "The New Orleans Riot—Who Caused It?" "Some Named Him with Iscariot," and "Kicking Out the Radicals"—Radical Victories in Congressional and State Elections—Popular Demand for Negro Suffrage.

THE year of 1866 is memorable in American politics for the fact that, though it came midway between presidential elections, during it there were held four great national political conventions. The reason for this was that elections to the Fortieth Congress were to be held in the fall, as well as to the State legislatures, which were to choose United States Senators; and that, if less than a two-thirds majority of Radicals were sent to the national legislature, then the President, even if he could not enforce his policy of reconstruction, would be enabled by his veto to prevent the adoption of an opposing one. The Administration hardly ventured to hope that it would secure a majority in its favor, but trusted to hold matters at a standstill until a revolution

of public sentiment should occur and it would be sustained two years later at the presidential election.

The Harmony Convention [Administration]

The first of these national conventions was an Administration one, held at Philadelphia on August 14.

Delegates were present from every State of the country, and the national harmony which this indicated was paraded in spectacular fashion by having them enter the hall by couples—a Northern delegate arm-in-arm with a Southern. This gave the humorists of the Radical press and platform an admirable opportunity to caricature the convention as a "Noah's Ark," into which there went "two and two of clean beasts, and of beasts that are not clean," which they used with great effect during the ensuing congressional campaign.

The Democrats were greatly in the majority in the assembly, causing it to be stigmatized by the Opposition as a "copperhead convention." Clement L. Vallandigham [O.] attempted to take part in the convention, but so great was the opposition to him by the Republicans that he withdrew at an early stage of the proceedings.

The object of the convention was to declare the right of every State to representation in Congress, and this was embodied in a series of resolutions reported by Senator Edgar Cowan [Pa.], and an address read by Representative Henry J. Raymond [N. Y.]. Mr. Raymond took an extreme position, saying:

> It is alleged that the condition of the Southern States and people is not such as renders safe their readmission to a share in the government of the country, that they are still disloyal in sentiment and purpose, and that neither the honor, the credit, nor the interest of the nation would be safe if they were readmitted to a share in its counsels. Even if this were so, he said: "We have no right to deny to any portion of the States or people rights expressly conferred upon them by the Constitution of the United States, and we have no right to distrust the purpose or the ability of the people of the Union to protect and defend under all contingencies, and by whatever means may be required, its honor and its welfare."

On August 18 a delegation from the convention called upon the President and delivered him a report of its proceedings.

In reply to an address by the chairman (Senator Reverdy Johnson, of Maryland) President Johnson delivered the following remarks, which were later included as a charge against him in his impeachment for high crimes and misdemeanors [see Volume IX, chapter II].

The Despotism of Congress

President Johnson

So far as the executive department of the Government is concerned, the effort has been made to restore the Union, to heal the breach, to pour oil into the wounds which were consequent upon the struggle, and (to speak in common phrase) to prepare, as the learned and wise physician would, a plaster healing in character and coextensive with the wound. We thought, and we think, that we had partially succeeded, but as the work progressed, as reconstruction seemed to be taking place, and the country was becoming reunited, we found a disturbing and marring element opposing us. In alluding to that element, I shall go no further than your convention and the distinguished gentleman who has delivered to me the report of its proceedings. I shall make no reference to it that I do not believe the time and the occasion justify.

We have witnessed in one department of the Government every endeavor to prevent the restoration of peace, harmony, and union. We have seen hanging upon the verge of the Government, as it were, a body called, or which assumes to be, the Congress of the United States, while in fact it is a Congress of only a part of the States. We have seen this Congress pretend to be for the Union, when its every step and act tended to perpetuate disunion and make a disruption of the States inevitable.

We have seen Congress gradually encroach step by step upon constitutional rights, and violate, day after day and month after month, fundamental principles of the Government. We have seen a Congress that seemed to forget that there was a limit to the sphere and scope of legislation. We have seen a Congress in a minority assume to exercise power which, allowed to be consummated, would result in despotism or monarchy itself.

The "Southern Loyalists" Convention [Radical]

The Radicals accepted the implicit challenge of the convention, and, in order to disprove that they were a sectional party, held at the same city two weeks later (September 3) a convention which was ostensibly called by Southern loyalists to secure the coöperation of their Northern friends. It was not possible to secure a full representation from the South, but still quite a number of Abdiels, "faithful among the faithless," were present, of whom, perhaps, the chief was Governor Andrew J. Hamilton, the staunch Unionist of Texas. Governor Hamilton presented to the convention the gavel which had been used in the Secession Convention of South Carolina, saying that it seemed a poetic retribution that the same instrument which had rapped the South into disunion and anarchy should call it back to loyalty and concord.

The Northern States were fully represented, and that by their most distinguished officials and statesmen. The most significant act of the convention was its choice as permanent chairman of James Speed [Ky.], the Southern man who had resigned his seat in the Cabinet [as Attorney-General] because he opposed the President's policy. On taking the chair Mr. Speed condemned very freely the President and the convention which supported him.

The convention came here simply to record in abject submission the commands of one man. The loyal Congress of the United States had refused to do his commands; and, whenever you have a Congress that does not resolutely and firmly refuse, as the present Congress has done, to act merely as the recording secretary of the tyrant at the White House, American liberty is gone forever.

Why was that convention here? It was here in part because the great cry came up from the white man of the South—My constitutional and my natural rights are denied me; and then the cry came up from the black man of the South—My constitutional and my natural rights are denied me. These complaints are utterly antagonistic, the one to the other; and

this convention is called to say which is right. Upon that question, if upon none other, as Southern men, you must speak out your mind. Speak the truth as you feel it, speak the truth as

"NOT ACCORDING TO THE CONSTITUTION"

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you know it, speak the truth as you love permanent peace, as you may hope to establish the institutions of this Government so that our children and our children's children shall enjoy a peace that we have not known.

The address agreed upon by the convention was in the form of an appeal "from the loyal men of the South to their fellow-citizens of the United States." It is thus summarized by Mr. Blaine:

Arraignment of President Johnson

Resolutions of the "Southern Loyalist" Convention

The representatives of eight million of American citizens "appeal for protection and justice to their friends and brothers in the States that have been spared the cruelties of the rebellion and the direct horrors of civil war. Having lost our champion we return to you who can make Presidents and punish traitors. Our last hope, under God, is the unity and firmness of the States that elected Abraham Lincoln and punished Jefferson Davis.

"We cannot better define at once our wrongs and our wants than by declaring that since Andrew Johnson affiliated with his early slanderers and our constant enemies his hand has been laid heavily upon every earnest loyalist of the South.

"History, the just judgment of the present and the certain confirmation of the future, invites and commands us to declare that after neglecting his own remedies for restoring the Union Andrew Johnson has resorted to the weapons of traitors to bruise and beat down patriots.

"After declaring that none but the loyal should govern the reconstructed South, he has practiced upon the maxim that none but traitors shall rule.

"In the South he has removed the proved and trusted patriot from office, and selected the unqualified and convicted traitor.

"After brave men who had fought the great battle for the Union had been nominated for positions, their names were recalled and avowed rebels substituted.

"Every original Unionist in the South who stands fast to Andrew Johnson's covenants from 1861 to 1865 has been ostracized.

"He has corrupted the local courts by offering premiums for the defiance of the laws of Congress, and by openly discouraging the observance of the oath against treason.

"While refusing to punish one single conspicuous traitor, though great numbers have earned the penalty of death, more than one thousand devoted Union soldiers have been murdered

in cold blood since the surrender of Lee, and in no cases have their assassins been brought to judgment.

"He has pardoned some of the worst rebel criminals, North and South, including some who have taken human life under circumstances of unparalleled atrocity.

"While declaring against the injustice of leaving eleven States unrepresented, he has refused to authorize the liberal plan of Congress, simply because they have recognized the loyal majority and refused to perpetuate the traitor minority.

"In every State south of Mason and Dixon's line his policy has wrought the most deplorable consequences—social, moral, and political."

Senator John A. J. Creswell [Md.] presented an address formed on these indictments. The main points of the address, as well as of all the speeches made during the convention, were that the adoption of the Fourteenth Amendment to the Constitution was imperatively necessary to secure the rights of the loyal men of the South, and that the Administration would not be permitted to evade this, the great and fundamental political issue of the time.

The Soldiers' Convention [Administration]

It was clearly seen that the vote of the Union soldiers would determine the coming congressional elections. Accordingly, on September 17, the Administration party held a third national convention at Cleveland, to which prominent army officers had been invited in order to show that the sentiment of those who had put down the Rebellion was opposed to coercive measures against the South. The venerable Gen. John E. Wool, retired from the United States Army, presided. In his speech on taking the chair he declared that the Radical party would not stop short of civil war in its endeavor to place the freedmen on an equality with their former masters. "These revengeful partisans would leave their country a howling wilderness for the want of more victims to gratify their insatiable cruelty." The generals present were either Democrats or conservative Republicans who,

it was seen, would inevitably join the Democratic party in their opposition to the Radical policy.

During the convention a meeting of Confederate officers was in session in Memphis, Tenn., and this sent a telegram expressing sympathy with the Cleveland assembly. Among the signers was Gen. Nathan B. Forrest, who had been held responsible by a congressional committee of investigation for the massacre of negro soldiers at the taking of Fort Pillow [see Volume VI, page 253]. Though further investigation had tended to exonerate Forrest, nevertheless he remained extremely odious to the Union soldiers in general, and the fact of his indorsing the Cleveland convention caused it to be greatly discredited as representative of the real soldier sentiment of the country.

The Citizen Soldiers' Convention [Radical]

Because the officers of the regular army had played a conspicuous part in the Cleveland convention, and because it had there been charged that the Radicals were bent on plunging the country into another civil war, the leaders of the Opposition, in response to a spontaneous demand from soldiers all over the country, determined upon a convention of citizen soldiers and sailors in order to show that those to whom war was not a trade, who had left their peaceful and gainful avocations at the nation's call, and who therefore would be the last to reenter into war for revengeful purposes, were in accord with the policy of securing by legislation the results for which they had made such great sacrifices.

This convention was held at Pittsburgh on September 25-26. In contradistinction to the soldiers present at the Cleveland convention, who were almost all officers, Pittsburgh was overrun with a vast number of private soldiers (estimated at 25,000). A private soldier, L. Edwin Dudley, who had resigned a Government position at Washington, upon leave of absence being refused him, in order to attend the convention, was chosen as temporary chairman. Delegates were present from every part of the Union.

Gen. Jacob D. Cox [O.] was made permanent chairman. In taking the chair he said:

It is unpleasant to recognize the truth that it is in the minds of some to exalt the executive department of the Government into a despotic power and to abase the representative portion of our Government into the mere tools of despotism. Learning that this is the case, we now, as heretofore, know our duty, and, knowing, dare maintain it. The citizen soldiery of the United States recognize the Congress of the United States as the representative government of the people. We know and all traitors know that the will of the people has been expressed in the complexion and character of the existing Congress. We have expressed our faith that the proposition which has been made by Congress for the settlement of all difficulties in the country [the Fourteenth Amendment] is not only a wise policy, but one so truly magnanimous that the whole world stood in wonder that a people could, under such circumstances, be so magnanimous to those whom they had conquered. And when we say we are ready to stand by the decision of Congress we only say as soldiers that we follow the same flag and the same principles which we have followed during the war.

Says Mr. Blaine:

The resolutions, read by Gen. Benjamin F. Butler [Mass.], were explicit and unqualified in their declarations and were indorsed with absolute unanimity.

They declared that "the action of the present Congress in passing the pending constitutional amendment is wise, prudent, and just. That amendment clearly defines American citizenship and guarantees all his rights to every citizen. It places on a just and equal basis the right of representation, making the vote of a man in one State equally potent with the vote of another man in any State. It righteously excludes from places of honor and trust the chief conspirators and guiltiest rebels, whose perjured crimes have drenched the land in blood. It puts into the very frame of our Government the inviolability of our national obligations, and nullifies forever the obligations contracted in support of the rebellion."

The resolutions further declared it to be "unfortunate for the country that the propositions contained in the Fourteenth Amendment have not been received with the spirit of concilia-

tion, clemency and fraternal feeling in which they were offered, as they are the mildest terms ever granted to subdued rebels."

The members of the convention, says Mr. Blaine, were in a tempest of anger against the President.

They declared "that his attempt to fasten his scheme of reconstruction upon the country is as dangerous as it is unwise; that his acts in sustaining it have retarded the restoration of peace and unity; that they have converted conquered rebels into impudent claimants to rights which they have forfeited and to places which they have desecrated. If the President's scheme were consummated it would render the sacrifice of the nation useless, the loss of our buried comrades vain, and the war in which we have so gloriously triumphed a failure, as it was declared to be by President Johnson's present associates in the Democratic National Convention of 1864."

Many other propositions of an equally decisive character were announced by the convention, and General John Cochrane declared that "a more complete, just and righteous platform for a whole people to occupy has never before been presented to the National sense."

The speeches of the convention were in the same tenor. Their burden was "support the Fourteenth Amendment." From this assembly, says Mr. Blaine, went forth the most attractive and eloquent speakers of the congressional campaign which was now inaugurated. Even the candidates were less influential. The convention did more to popularize the Fourteenth Amendment than any other instrumentality of the year.

The New Orleans Massacre

The murders of negroes and Union white men referred to in the resolutions of the Radical conventions had taken place in various parts of the South since the close of the war, chiefly as a result of private cruelty or revenge. However, on July 30, 1866, a riot occurred in New Orleans, La., in which about forty white loyalists were killed outright and 150 wounded; about fifty so severely that they afterward died. The occasion was the

reassembling of the constitutional convention authorized by the free constitution of the State, adopted in 1864. Fearing that the convention would adopt negro suffrage opponents of that measure rose in a mob against the assembly and began to shoot down the delegates. In an investigation conducted by the next Congress it was found that the mayor of the city and other municipal authorities had purposely misled the military commander of the district so that no troops were available to quell the riot, and that the police aided the rioters. Gen. Philip H. Sheridan, commander of the department, said of the killing that it was "so unnecessary and atrocious as to compel me to say it was murder." An investigation into the affair was also conducted by the War Department, which found that "there was among the class of *violents* known to exist in the State, and among the members of the ex-Confederate associations, a preconcerted plan and purpose of attack upon the convention provided any possible pretext therefor could be found."

None of the rioters were arrested by the municipal authorities, though they were well known to the police. Some of them were civil officials, who not alone escaped punishment but were continued in their places. Instead, the judge of the criminal court in New Orleans instructed the grand jury to indict for murder the members and spectators of the convention, which he declared unlawful.

President Johnson was condemned by the congressional investigating committee for telegraphing on the eve of the convention orders to the military of New Orleans the effect of which, if they had been enforced (as they were not because of the riot intervening), would have been to cause the Federal troops to coöperate with the opponents of the convention in suppressing the meeting.

The "New Orleans Massacre," as it was called by the Radical orators, was referred to with great effect in the attack upon the President and his policy, not only during the congressional campaign but throughout the ensuing session of Congress.

"Swinging Round the Circle"

On August 28, 1866, the President left Washington in company with Gideon Welles, Secretary of the Treasury; Alexander W. Randall, Postmaster-General; Gen. Ulysses S. Grant, Admiral David Farragut, and other army and navy officers, as well as a host of newspaper reporters, to make a speaking tour on the way to attend the inauguration on September 6 of a monument to Stephen A. Douglas at Chicago. The route was through Philadelphia and New York (where the party was joined by William H. Seward, Secretary of State), and thence westward through the principal cities of New York, northern Ohio, and Indiana to Chicago, and thence back to Washington by way of St. Louis.

In several cities through which he passed the President delivered disputatious speeches on the subject of "my policy," which were frequently interrupted (in particular in Cleveland) by remarks, often insolent, from persons in the audience, whereupon he would indulge in repartee in the manner of a stump orator. The facts that he was using an invitation to pay solemn respect to a dead statesman as an opportunity to advance his own interests in a manner entirely foreign to the occasion, and that he did this in a fashion most unworthy of his high position even though he were making a speaking tour pure and simple, were severely commented upon not only by the Opposition but even by editors and public men who were non-partisan, or, indeed, had hitherto been friendly to the Administration.

The journey became aptly known as "swinging round the circle," there being an insinuation in the phrase that the President was preparing the country for his return to the Democratic party. Newspaper humorists played upon this and kindred themes. David R. Locke ("Petroleum V. Nasby"), who signed his letters to the press from "Confedrit X Roads" as a dyed-in-the-wool "butternut" (a less opprobious synonym for "copperhead"), wrote in pretended support of the President that he had undertaken the tour in order "to arouse the

people to the danger of concentrating power in the hands of Congress instead of diffusing it through one man." Says Mr. Blaine: "With whatever strength or prestige the President left Washington, he certainly returned to the capital personally discredited and practically ruined."

The following extracts from his speeches on this tour were cited in the Articles of Impeachment subsequently brought against him by Congress.

In Cleveland, on September 3, he spoke as follows: [1]

Who Is Traitor—The President or Congress?

President Johnson

I will tell you what I did do. I called upon your Congress that is trying to break up the Government. . . .

In conclusion, beside that, Congress has taken much pains to poison their constituents against me. But what had Congress done? Have they done anything to restore the union of these States? No; on the contrary, they have done everything to prevent it; and because I stand now where I did when the rebellion commenced I have been denounced as a traitor. Who has run greater risks or made greater sacrifices than myself? But Congress, factious and domineering, has undertaken to poison the minds of the American people.

In St. Louis, on September 8, replying to an interruption: "How about New Orleans?" he said:

The New Orleans Riot—Who Caused It?

President Johnson

If you will take up the riot at New Orleans and trace it back to its source you will find out who was responsible for the blood that was shed there. You will find that the riot at New Orleans was substantially planned in the radical Congress. If you will take up the proceedings in their caucuses you will understand that they there knew that a convention was to be

[1] As illiteracy was charged against the President, the language of these speeches is given as reported, though somewhat abridged.

called which was extinct by its power having expired; that it was said that the intention was that a new government was to be organized, and on the organization of that government the intention was to enfranchise the colored population who had just been emancipated, and at the same time disfranchise white men. When you design to talk about New Orleans you ought to understand what you are talking about. When you read the speeches that were made before that convention sat, you will find them incendiary in their character, exciting that portion of the population, the black population, to arm themselves and prepare for the shedding of blood. You will also find that that convention did assemble in violation of law, and the intention of that convention was to supersede the reorganized authorities in the State government of Louisiana, which had been recognized by the Government of the United States; and I say that every man engaged in that convention was a traitor to the Constitution of the United States, and hence you find that another rebellion was commenced having its origin in the radical Congress.

Continuing, he said:

"Some Named Him with Iscariot"

President Johnson

When you talk about the causes and consequences that resulted from proceedings of that kind, perhaps, as I have been introduced here, and you have provoked questions of this kind, though it does not provoke me, I will tell you a few wholesome things that have been done by this radical Congress in connection with New Orleans and the extension of the elective franchise.

I know that I have been traduced and abused. I know it has come in advance of me here, as elsewhere, that I have attempted to exercise an arbitrary power in resisting laws that were intended to be forced upon the Government; that I had exercised that power; that I had abandoned the party that elected me, and that I was a traitor because I exercised the veto power in attempting and did arrest for a time a bill that was called a "Freedman's Bureau" bill. And I have been traduced, I have been slandered, I have been maligned, I have been called Judas Iscariot, and all that. Now, it is very easy to indulge in epithets; it is easy to call a man a Judas and cry out traitor, but when he is called upon to give arguments and facts he is very often found wanting. If I have played the Judas, who has been my Christ that I have played the Judas with? Was it

Thad. Stevens? Was it Wendell Phillips? Was it Charles Sumner? These are the men that stop and compare themselves with the Savior; and everybody that differs with them in opinion, and to try and stay and arrest the diabolical and nefarious policy, is to be denounced as a Judas.

He concluded with a threat to "kick the Radicals out of office."

Kicking Out the Radicals

President Johnson

Well, let me say to you, if you will stand by me in this action, if you will stand by me in trying to give the people a fair chance, soldiers and citizens, to participate in these offices, God being willing, I will kick them out. I will kick them out just as fast as I can.

Let me say to you, in concluding, that what I have said I intended to say. I was not provoked into this, and I care not for their menaces, the taunts, and the jeers. I care not for threats. I do not intend to be bullied by my enemies nor overawed by my friends. But, God willing, with your help, I will veto their measures whenever any of them come to me.

Congressional Elections

The Republicans won overwhelmingly in the ensuing elections to choose members of Congress and State legislators, who in a number of States were to select United States Senators. They were even wholly or partially successful in Northern States hitherto reckoned as staunchly Democratic, such as New Jersey, Connecticut, California, and Oregon. They also carried the border States of Missouri and West Virginia. The other border States were strongly Democratic, there being only one Radical Republican elected out of five Representatives in Maryland and one out of eight in Kentucky.

In the Southern States, none of which except Tennessee had yet been restored into the Union, the State officers were elected by a heavy and almost solid Democratic vote, showing that the section defeated in the war would be almost unanimous in the attempt to regain by

the ballot as much as possible of what it had lost by the sword.

The total result of the congressional elections was 143 Republican Representatives to 49 Democratic. Of the Republicans there were but two supporters of the Administration: Charles E. Phelps [Md.] and Thomas E. Noell [Mo.], and Noell died during the session and was succeeded by a Democrat.

This election meant that Congress would be able easily to override any veto of the President and would probably be strong enough to impeach him if, as was feared might happen, he entered upon a course of action regarded by the Republican leaders as unconstitutional.

During the congressional campaign a strong popular demand was manifested for extending the suffrage to negroes as a basis for reconstruction in the South, and this in despite of the fact that to be constitutional the extensions would have to apply throughout the Union, in nearly all the States of which the negro was with general approval disfranchised.

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